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# COUNCIL OF STATE DEBATES

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THIRD SESSION

OF THE

COUNCIL OF STATE, 1923.



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# COUNCIL OF STATE.

Monday, the 5th March, 1923.

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

## QUESTIONS AND ANSWERS.

### MEMORIAL FROM MRS. SUNDAR BAI PALSHIKAR.

160. The HONOURABLE MR. PHIROZE SETHNA: (a) Will Government be pleased to state whether they have received a memorial from Mrs. Sundar Bai Palshikar, wife of Krishnarao Ramrao Palshikar of Indore, now residing at Cawnpore?

(b) Is it true, as stated in the memorial, that the said Krishnarao Palshikar is a first class Sardar of the Deccan and a British Indian subject as well as a subject of the Indore State?

The HONOURABLE MR. J. P. THOMPSON: (a) Government have received a memorial from a lady styling herself as stated in the question.

(b) No such name appears in the latest list of the Sardars in the Deccan, published in the Bombay Civil List of 1st July 1922 and Government cannot say whether the gentleman referred to is a British Indian subject.

### CODIFICATION OF HINDU LAW.

161. The HONOURABLE MAHAMAHOPADHYAYA DR. GANGA NATH JHA: Will Government be pleased to make available, for the information of Honourable Members, the replies that have been received regarding the codification of Hindu Law?

The HONOURABLE MR. J. CRERAR: Copies of the replies have been placed in the library of the Legislature.

## STATEMENT LAID ON THE TABLE.

The HONOURABLE MR. J. CRERAR (Home Secretary): I lay on the table the information promised in reply to a question by the Honourable Mr. Kale in the Council of State on the 24th January, 1923, regarding the cost of Professor Horne's deputation to America.

The total cost of Professor Horne's deputation to America, including the cost of salary, passages and all travelling allowances, amounts to Rs. 37,573 according to figures supplied by the Local Government.

## RESOLUTION RE IMPOSITION OF AN EXPORT DUTY ON BENZINE AND PETROL.

The HONOURABLE THE PRESIDENT: The Council will now resume the further discussion of the Resolution\* moved by the Honourable Rai Bahadur Lala Ram Saran Das on the 19th of February.

\* "This Council recommends to the Governor General in Council to take into immediate consideration the desirability of imposing a duty on benzine and petrol exported from Burma and other Indian Provinces to foreign countries."

The HONOURABLE MR. V. G. KALE (Bombay: Non-Muhammadan):  
 Sir, I have to move an amendment to the Resolution and it will be:

"That after the word 'duty' the words 'of not less than 6 annas per gallon' be added."

In moving this amendment I should like to draw the attention of the House to a few interesting facts in connection with the export and the production of petrol in this country. From the information which has been given on behalf of Government it appears that the production of petrol in Burma amounts to about 32 million gallons per year, and from the figures which were supplied by the Honourable Mr. Chadwick in reply to a question put to him in this House a few days ago, it appears that for the five years from 1917-18 the export of petrol from Burma and other provinces amounted, on an average, to 23 million gallons a year. The excise duty during the same period was, on an average, 45 lakhs per year. It appears from these figures that only 12 million gallons of petrol paid excise duty. I do not know exactly what the balance of production in India was or whether that production paid any excise duty or not. From an answer given to a question relating to petrol in the other House recently, it was pointed out that the petrol supplied to the Army Department did not pay any excise duty. Perhaps the difference between the figures which I have given to the House may be accounted for by the fact that the petrol supplied to the Army Department has not paid an excise duty. Another interesting fact to be noticed is the very small amount of the cost of production of petrol in Burma. If six annas per gallon were to be added to that cost, which has been declared to be the value of petrol exported from India, and which seems to have been accepted as the value by Government, the value should come up to 8 annas per gallon; but, as a matter of fact, the price that the public has to pay is something like Rs. 1-12 or Rs. 1-14, so that the companies concerned are making a profit of more than 200 per cent. I do not know why the Government of India should be powerless in not being able to compel these companies to reduce the price of petrol supplied to the Army Department. If they are exempted from duty there is no reason why the petrol companies should extort from Government and indirectly from the public a higher price than is really justified. If all the petrol produced in India had paid excise duty it should have produced, on an average, Rs. 80 to 90 lakhs, so that there is a leakage of 40 lakhs per year, and I do not know to what extent that leakage is to be accounted for by the explanation I have given, namely, that petrol supplied to Government does not pay this excise duty.

It has been suggested in a question which was put in the other House that there is a powerful combination among oil producers. It appears that a very large quantity of petrol known as shell petrol, is sold in this country, but from statistics of imports one finds that, except for a very small quantity imported into this country, shell petrol does not seem to come into India to any appreciable extent. So, there is a kind of agreement between the Burma Oil Company and the Shell Company perhaps and that agreement enables them, if I may put it so, to evade the duty which legitimately the companies ought to pay. I should like to draw the attention of Government, therefore, to this important feature, namely, that they must make these oil companies pay the proper duty. If the Government were to levy an export duty of 6 annas per gallon, the addition to the amount of revenue received by Government would go up to something like 80 to 90 lakhs of rupees per year. Now, when we are thinking of making up the deficit in

the Budget for next year, I do not think that this amount is a negligible one. I wonder why the attention of Government has not been drawn to this important productive source of revenue up to this time, and I have no doubt that when all the facts are taken into consideration Government will see their way to impose an export duty of 6 annas per gallon, corresponding to the excise duty. From the figures of the excise duty collected during the six months ended in last September it appears that about 40 lakhs were realized from the duty. If the progress that is indicated by this figure is maintained during the remaining six months of the official year, then perhaps the duty might amount to 80 lakhs; and if we have another 40, 50 or 60 lakhs from an export duty, I think it will mean a substantial addition to the resources of Government.

With these words, therefore, I commend this amendment to the favour of this House.

The HONOURABLE THE PRESIDENT: To the Resolution which is under discussion the amendment has been moved:

“That after the word ‘duty’ the words ‘of not less than 6 annas per gallon’ be added.”

That amendment and the original Resolution will be susceptible of discussion together and are therefore now open to debate by the Council.

(At this stage the Honourable Sir Maneckji Dadabhoj took the Chair.)

The HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): Sir, last week the House did me the courtesy of adjourning the debate on this Resolution, and I wish to express my appreciation to it for that courtesy. As the Budget has now been published, it enables us to place before the House all the facts which guided the Government in coming to their conclusions; and if I put those facts before the House I think it will aid us very much in our discussion of this question to-day. It is a question which, I think, has very rightly been brought for discussion in this House. It has attracted an enormous amount of attention among the motoring section of the public, who feel somewhat annoyed and irritated at the high price they have to pay for petrol. They recognise that this is to some extent due to the excise duty. The statement that the excise duty is a duty on consumption and is not thereby imposed upon exports does not satisfy them. Perhaps naturally; although of course that principle holds entirely for the cotton excise duties. However, Sir, they also point out by an arithmetical calculation that if we place an export duty on petrol we shall get something like 75 to 80 lakhs as my Honourable friend Mr. Kale says. Before I come to that there is one little point I want to clear away completely. It is not material really to the arguments put forward by those who advocate an export duty, though it does to some extent cloud the issue. They have examined the old Sea-borne Trade returns and, from the figures they saw there, deduce that the Oil Companies declare the value of petrol exported from Burma at  $1\frac{1}{2}$  annas per gallon. Comparing that figure with the price they have to pay for petrol they are naturally amazed. Well, Sir, my only regret was that the zeal of those who studied our statistics did not carry them a little further in their search for knowledge, because had they looked at a volume later than that which ended with the trade of 1920-21, they would have found that the price of petrol was not declared at  $1\frac{1}{2}$  annas but at over Rs. 1-2 a gallon. I will explain very quickly what happened. In the early years of the Oil Companies in Burma the product sought for was

[Mr. D. T. Chadwick.]

kerosene. In those days—it seems strange to us now—petrol was of practically no value. It was either thrown away, burnt or otherwise destroyed. Then a demand, a small demand, began to spring up in Europe. Petrol had no market value in Burma or in India. The Collector of Customs for the time being had to assess a value and took the arbitrary value of  $1\frac{1}{2}$  annas a gallon. Right back at the beginning of the century or at the end of last century, that ruling became enshrined as a standing order in the Statistical branch of the Rangoon Customs Department, and one can understand how that venerable order stood firm for all those years. The Burma Oil Company returned the true value, but a Collector of Customs at once said that the value of petrol for purposes of export was  $1\frac{1}{2}$  annas and therefore in the eyes of the Statistical Department it was  $1\frac{1}{2}$  annas.

The other portion of that story is that after a time a demand for petrol sprang up in India and petrol was exported to India. Then it was brought into the returns of coasting trade; but that venerable order said nothing about the coasting trade; so the Statistical Department entered in the returns of the coasting trade the actual declared value of the petrol. The result is, we have an absolute absurdity in our old returns, namely, that the same petrol exported to India is shown at an average of Re. 1, and in our Sea-Borne Trade figures at  $1\frac{1}{2}$  annas a gallon. Fortunately, Sir, for Government, the first person who detected the absolute ridiculousness of this was the Collector of Customs, Rangoon. A year ago, that is, in February 1922, he slew that old order, and in the monthly volumes of our Sea-Borne Trade which are published every month those beginning with April, 1922, show the correct value of petrol and all the back figures given in those issues were corrected. I apologise, Sir. I am extremely sorry we laid this trap for students of statistics. It was done quite unwittingly. I am also sorry, Sir,—perhaps I may be allowed to say so—that their thirst for information was satisfied when they came to such amazing results and that it did not lead them to look into some of the later returns. The annual sea-borne trade returns for 1922-23, published in October last, gave the correct value of petrol exported overseas.

I trust by that short explanation three things have been done. I have exploded the idea that Oil Companies have been making false declarations. That they have not done. Secondly, I trust the deduction made from these figures, namely, of excessive profiteering as far as it is based on those figures, falls to the ground. And thirdly, I hope the House will accept my apology for the mistake that has occurred in the early returns and will recognise that it was corrected before this agitation really started.

Now, Sir, I come to the main point. I ask the House to dismiss this  $1\frac{1}{2}$  annas per gallon entirely from their minds. We shall have to deal with other and more important figures, and it is necessary to keep those perfectly clear. The assumption really as it appears to those who advocate an export duty, is that this export duty will be paid by the foreigner and that we are losing a great deal of revenue. But that first conclusion needs a little bit of examination.

The total exports of petrol from Burma, as has been pointed out by my Honourable friend Mr. Kale, are 20 million gallons. That, Sir, is a mere drop in the consumption of petrol in the world. Take the imports into the United Kingdom alone. They are 210 million gallons, to say nothing of the consumption in other European countries. From 200 to 210 million

gallons for one country alone. It is perfectly clear, therefore, that a Company which can handle 20 million gallons cannot rule the world's competitive price when the total consumption in only one country is over 210 millions. There are free markets in the world. There is a free market for petrol in the United Kingdom where it has to be sold at a competitive price. We have had plenty of evidence that this competition between oil companies exists in the statements that have been made in the papers of the anxiety of the contending companies to get oil concessions in different parts of the world. Well, Sir, since the war three countries have tried an export duty, Mexico, Rumania and the Dutch East Indies; and it is worth while to see what their experience has been. Mexico from the very old days had only one tax and that was a very small export duty. It did not trouble over income-tax, or royalties or all those other duties which companies in India pay. After the war Mexico endeavoured to impose a real export duty and before a year was over she dropped it; she dropped that export duty altogether because she found that it did not increase her revenue. Production was lessened. Rumania and the Dutch East Indies also tried export duties and I would rather like the House to see the kind of export duty they put on. One of them put on a duty of half an anna a gallon and the other put on quarter of an anna a gallon. In both cases production dropped. The revenues expected were not obtained and within a year they abandoned their export duty. Sir, those facts alone are sufficient to warn us that we have very little chance of getting this export duty out of the foreigner, i.e., the foreign buyer. Other countries have failed to do it. Our exports are small compared with those of those other countries, very small, and there is no likelihood whatever that we would be able to succeed where they failed and least of all if we put on such a big sum as six annas a gallon.

There is another point. We may accept it as a rule that any taxation on commodities is passed on to the consumer or at any rate those that handle that commodity will do their best to pass it on to some consumer; it may be to foreign buyers or it may be to the people of our own country. It is immaterial to the company which handles the product how it recoups itself for the taxation that is imposed on it. Petrol is only one of the products from crude oil; another and much more important one is kerosene. We have to consider the position of India in regard to kerosene. Burma sends to India 100 millions of gallons of kerosene a year. She exports to foreign countries, as we have said, 20 millions of gallons of petrol. Therefore for every gallon of petrol exported by Burma to foreign countries five gallons of kerosene are sent from Burma to India. I would ask the House to try and keep that proportion in their minds—five gallons of kerosene to India to one gallon of petrol exported outside. India also imports from 50 to 80 million gallons of kerosene from abroad; that is, her supply from Burma is insufficient for her needs. Therefore, Sir, under the ordinary rules of supply and demand if from  $\frac{1}{5}$  to  $\frac{1}{4}$  of our total consumption of kerosene is obtained from foreign countries, the price of kerosene in India would normally be that of the imported article. The world's competitive price would fix the normal price of kerosene in India. But, Sir, the position in regard to kerosene in India is peculiar. In the old days, the end of the last century, the Burma oil fields supplied all India's needs of kerosene. Since then consumption has increased enormously. As far back as 1905 the Burma Oil Company, the biggest of our local suppliers, sold its inferior kerosene at Rs. 2-14-0 per unit of eight gallons. It maintained that price right through up to 1919. The

[Mr. D. T. Chadwick.]

costs of production were increasing; the cost of foreign kerosene rose abnormally, freights rose very much and those who were here in 1919 will know and remember to what height the prices of foreign kerosene rose. They rose to such an extent that while the Burma Oil Company continued to charge Rs. 2-14 opportunity was afforded for a whole crop of intermediary profiteers to buy it and to sell it in the bazar in retail at exorbitant prices. When that state of affairs came, there were only three courses open to oil companies; one was to allow this irregular profiteering, which was causing much irritation, to continue. The second was to put up their own prices to the world's competitive prices, which is the normal thing in trade. The third was to endeavour by some means to increase the total supplies of kerosene in India so as to supply India's needs at something like a reasonable figure. It is this last course that they adopted. In combination with the biggest importers of kerosene into India, *viz.*, the Asiatic Petroleum Company, they came to an arrangement, an arrangement which has been extremely beneficial to India and it was this. The Burma Oil Company put into a pool the whole of its supplies of kerosene, inferior and other, and the Asiatic Petroleum Company bought in the world's market from time to time sufficient kerosene to supply the estimated needs of India. The market price at which the combined kerosene was sold was the mean between the price of the Burma Oil Company's inferior kerosene at 2-14 per unit, the old price of 1905, the price of the superior kerosene that it had to put in, and the market price of the foreign kerosene that the Asiatic Petroleum Company bought. The result was that India has been getting its kerosene at prices below the world's competitive price. That agreement was a voluntary one. Government was not a party to it and it has been loyally observed till to-day. To-day the price of inferior kerosene in India is three annas a gallon below the world's competitive price. To show roundly what this meant to India, I may say that the Chairman of the Burma Oil Company in his speech at the annual meeting in 1920, said that had the Burma Oil Company been able to obtain the full market value in India of its kerosene, their profits would have been increased by £4 millions; i.e., as a result of keeping this average price constant in the manner indicated above, India has been saved that sum. In the years since that date he claims that India has saved something like Rs. 38 crores on what she has had to pay for kerosene. These are arithmetical calculations somewhat analogous to those which my Honourable friend Mr. Kale has made. I only quote them to show the magnitude of what this pool arrangement may have meant to India.

Now, I think the position is becoming clearer and the considerations which have moved Government are, I hope, becoming more apparent. If an export duty is levied on every gallon of petrol sent abroad and the cost to the company increased thereby, they will naturally try to recoup themselves as well as they can. They will naturally recoup themselves in the market in which they are strongest and on the commodity over which they have the biggest control; that means to say, it will in all probability come down on kerosene in India. That voluntary agreement, which is still being observed, and which is very useful to this country, will go. My Honourable friend, Professor Kale, will see that with a consumption of 100 million gallons of kerosene here and with an export of 20 million gallons of petrol, the companies have only got to raise the price of kerosene by one anna a gallon in order to recoup themselves for five annas a gallon export duty on petrol. Apart from all theories of export duties, that, Sir, is the

practical point which I very much want the House to consider and which has weighed with Government in this matter. The whole question has been considered most carefully and I would summarise it very briefly as follows. A tax of an anna a gallon on exports of petrol, if you assume those still remained at 20 million gallons, would be Rs. 12½ lakhs a year, or if it is, as now proposed by Professor Kale, at a rate of 6 annas a gallon, it would arithmetically, theoretically, bring in Rs. 75 lakhs a year. The experiences of other countries, which have tried these export duties on a very much smaller scale, make it perfectly clear that it would be quite impossible to put on an export tax of anything like 6 annas a gallon on petrol. The only result would be that the export trade in petrol from Burma would be destroyed, that is to say, as far as Government is concerned, we should get no revenue from the export duty or practically nothing. At the same time we should gravely injure those oil companies in India. We should make their surplus petrol unsaleable and it is extremely probable that they would endeavour to recoup themselves for the loss of these profits by increasing the price of kerosene in India on which at present they have a margin of 3 annas a gallon. The net result, therefore, would be that, while on our examination of the position, we entirely fail to see that we get any considerable revenue from this export duty, we have every reason to believe that the effect of that export duty will be to increase by at least one anna a gallon the price of kerosene in India. Moreover, I want to point out that that increase in the price of kerosene in India would not come into the coffers of Government; it will go into the pockets of the oil companies. Therefore, Sir, I feel that a vote to-day for an export duty on petrol will in actual effect be a vote for maintaining or possibly raising the price of kerosene to the detriment of the very large number of consumers in this country and that it will profit the Oil Companies and not the Government revenues. I am extremely indebted to the House—the House will have seen from the arguments which I have presented, how impossible it would have been for me to have dealt with all these figures before the Budget was issued—I repeat I am extremely indebted to the House for adjourning the consideration of this question so that it could be debated to-day.

The HONOURABLE MR. PHIROZE SETHNA (Bombay: Non-Muhammadan): Sir, the Honourable Mr. Chadwick thanked the Council for the courtesy extended to Government in not pressing to a vote the Resolution moved by the Honourable Lala Ram Saran Das a few days ago. The Council asked for a postponement themselves because they had hoped that in reply to the numerous representations made to the Finance Department by public bodies as also by private individuals, Government would see their way to include an export duty on petrol in the Budget. In that we have been disappointed. Neither the Honourable the Finance Member in the other place nor the Finance Secretary in this House in the first instance gave us any reasons as to why such export duty was not included. But to-day, Sir, we have had a very long explanation and an array of figures from the Honourable Mr. Chadwick. Sir, immediately following, as I am, the Honourable Mr. Chadwick, in the speech he has made it is not possible to dissect the figures he gave in the manner one would like. But I cannot help saying that at first sight it strikes me that in spite of his figures we have reason to hold that an excise duty on petrol will be beneficial to this country. The Honourable Mr. Chadwick first of all apologised for the mistake made by Government in allowing the price of petrol to remain in Government publications at only 1½ annas per gallon for such petrol as

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was exported. We accept the explanation, but it leads one seriously to think that if mistakes of this kind are allowed to creep into Government blue-books, then we cannot always accept their figures and statements as gospel but must do so *cum grano salis*.

However, after the explanation that he has given about the cost of the petrol to the Burma Oil Company being Rs. 1-2-0, he said that because the price is that and because other countries like Mexico, Rumania, and the Dutch Indies, have tried an export duty and have failed, we shall also meet with the same fate if we likewise impose an export duty. He has not told us whether the cost of production of petrol in those countries is the same as here. I take it that it would be much higher on account of the cost of labour being higher in those countries. Assuming, however, that the price of petrol in those countries is the same as here, namely, Rs. 1-2-0 per gallon—and he has told us that the export duty in these countries was the equivalent of either half an anna per gallon or a quarter anna per gallon. He added that the trade could not bear this extra burden and the export duty had to be dropped. If my Honourable friend has worked out figures he will find that half an anna or a quarter anna on Rs. 1-2-0 represents an increase in the price of only  $3\frac{1}{2}$  per cent. or  $1\frac{1}{2}$  per cent. and does the Honourable Mr. Chadwick in all seriousness desire this House to believe that in a business like the business of oil companies, the trade could not stand an increase of  $3\frac{1}{2}$  or  $1\frac{1}{2}$  per cent, as the case may be when these same companies, as we all know, are paying dividends from 40 to perhaps 100 per cent. and when their shares of £1 stands at £5 and much over? Therefore I say that figures set forth by my Honourable friend Mr. Chadwick require very careful dissection, and I, for one, am not prepared to accept his theory that an export duty on petrol on Burma will prove disadvantageous to our revenue or inflict an injury to the oil companies.

Now, Sir, according to the Act of 1917 a duty of 6 annas was to be levied on all motor spirit produced in India and Burma, and that for as long as the war lasted and for six months thereafter. In 1919 the latter provision was repealed, so that it has been paid continuously till now and will continue to be paid for we do not know how long. When the Act was passed, the country understood—and I believe that the Government in their own minds had the idea—that this duty was to be levied on all petrol which was issued out of the premises of every manufactory in British India. In 1921 I asked a question if the six annas duty was charged only on petrol which was consumed in the country or was also charged on exports. The reply then received from Government was:

“(a) The duty is not levied on motor spirit exported by the owner of a manufactory in British India by sea to any country outside India. (b) Excise duties, being duties on consumption, a refund of excise duty is granted in the case of commodities subject to such duties in order to enable these goods when exported to compete on equal terms with similar goods of foreign markets. In imposing an excise duty on motor spirit the Government of India followed this general principle.”

Taking the figures as they appeared in the blue-books, namely, that the cost of petrol which was exported was only  $1\frac{1}{2}$  annas per gallon, the country was right in assuming that the “general principle” referred to by Government in their reply just quoted could not apply at any rate to the oil trade. But after the explanation to-day from the Honourable Mr. Chadwick, we take it that the cost is not  $1\frac{1}{2}$  annas a gallon, but Rs. 1-2-0 as stated by Mr. Chadwick or Re. 1 as the oil companies themselves make out. In the returns they submit that when oil is landed for

consumption in this country the value is given by the oil company for customs purposes as Re. 1 per gallon. But whether the cost is Re. 1 or Rs. 1-2-0, I contend that the profits of this business on account of the combine are so very large that a duty as proposed by my Honourable friend of not less than six annas per gallon would not kill the trade, nor, as my Honourable friend said, "gravely injure the oil companies in India."

I have already told you what the position of the Burma Oil Company is. I have quoted their profits and the price of their shares, from which the House will have seen that the position is perhaps different from what my Honourable friend made out. My Honourable friend has, as it were, presented the view-point, not of the consumer, but of the oil combine. When Government replied to my question or to the representations made by public bodies and private individuals, Government would have done well if they had given us then the explanation which the Honourable Mr. Chadwick has thought right to give to the House as late as to-day. Therefore I repeat that I am not at all convinced, and we cannot decide this point all at once. If, as I say the Honourable Mr. Chadwick has put before us the point of view of the oil combine, then it is but fair that those who hold the contrary view must be given the opportunity to contradict those figures if they can. I am consequently in favour of the Resolution of Lala Ram Saran Dass with the rider added by Mr. Kale, that the export duty should be not less than 6 annas per gallon.

Mention was made of the Shell Company. Every one knows that the Shell Company is an American concern. To a question put in the other House a reply was given that there were only 1,348 gallons of shell petrol introduced in the year 1919-20. Can Government expect any people in their senses to believe that the import of the Shell Company's oil was only 1,348 gallons in a year when we see all around us, all over the country, not hundreds, not thousands, but tens of thousands of tins carrying the label of the Shell Oil Company. And yet the Government reply was correct. The explanation has been given to-day by Mr. Chadwick that the Burma Oil Company fill their own oil in shell oil tins, a process by which the shell oil, a foreign company, robs the Government of this country by thus escaping what import duty it would have paid if it imported its petrol from America.

I contend that the question requires to be looked into very thoroughly. The Honourable Mr. Chadwick holds that this duty will not bring in any revenue to the Government. We who hold the contrary opinion, say, if as originally intended when the Act was passed, a duty of 6 annas a gallon was levied, not only on what is consumed in the country, but also on what is exported, we would by now have had another five crores of rupees in revenue, a sum which would have proved a great help to our finances at the present time. And as the Honourable Mr. Chadwick has told us that if we now charge 6 annas a gallon on petrol exports the income would be about 85 lakhs of rupees. Mr. Chadwick observed that in other countries they experimented for a year, and after that they had to give up the duty. I say, let us experiment in this country also for a year and we will find that the results will be eminently satisfactory from the point of view of the revenues of the Government of India.

**THE HONOURABLE COLONEL SIR UMAR HAYAT KHAN (West Punjab: Muhammadan):** Sir, I cannot but back up the amendment and the Resolution. The amendment has brought forward specific proposals which, if accepted, will be very useful. By this we will kill two birds with one

[Colonel Sir Umar Hayat Khan.]

stone; on the one hand we will get revenue by imposing a duty, and on the other hand we shall get cheap petrol and kerosene oil. Sir, being a zemindar, I do not see it from the point of view of motor cars only. There are numbers of agricultural colonies which have sprung up in the Punjab in the last two or three decades, such as the Colonies of Upper and Lower Jhelum, Lyallpur and Chenab Canals. There is another Colony coming into existence, that is the Sutlej Valley Project and irrigation is also going to be extended to the States of Bahawalpur and Bikanir, which have got vast lands. On the top of all that a very large tract of country called the Sind Sagar is to be irrigated. Where will the tenants for these lands come from and from where will the proprietors get their labour? They will have to use tractors and other implements and they will require kerosene oil, and petrol, etc., and I think it is necessary for the prosperity of the country to do something of the kind that has been asked for, so that when the time comes, when these tracts are irrigated, they will be able to use implements with cheap oil. There is one of my relations, Sir, who bought a tractor, and we calculated that with this dear kerosene oil he lost money. If he had had bullocks and ordinary tenants, he would have run it cheaper than with the machine and he was losing two or three rupees a day. But if there was some means by which the oil could be made cheaper, the tractor could have taken the place more cheaply of the men workers and the bullocks. Already we find, Sir, that the number of tenants is growing less and less and I think we should look ahead. Then again there are many other small machines used by zemindars which require kerosene oil, such as those for ginning, grinding and some others. So that if we can do something in the way of cheapening kerosene oil, etc., it will be for the prosperity of the country. India is a country which is mostly agricultural, and it is for this reason that I very strongly support the Resolution which would be useful for all those who require kerosene oil and petrol.

The HONOURABLE MR. D. T. CHADWICK: May I make a personal explanation. I gather my Honourable friend has misunderstood me. I pointed out that this duty would result in an increase in the price of kerosene oil, not in a decrease.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay: Non-Muhammadan): Sir, I rise to support the Resolution with the amendment of my Honourable friend Mr. Kale. The Honourable Mr. Chadwick, in his reply, said that the levy of excise duty should not be objected to, and in support of it he cited the instance of cotton piecegoods. Perhaps he did not realise then, Sir, that there is very little export indeed, if any, of cotton piecegoods, and the excise duty in this connection has been objected to, but without any result because of the Secretary of State's orders. It is not that we like an excise duty on cotton goods; we do not like it, but we have not been able to remove it. And I may say that we expected that the Finance Department would have in this year's budget removed it, but they have not been able to do so. Still it is a duty we accepted under protest. Moreover it cannot have any analogy with the duty on petrol because there is very little, if any, export of cotton piecegoods compared to what there is of petrol. The other argument used by my Honourable friend Mr. Chadwick was that only 20 million gallons of petrol are exported from Burma to the United Kingdom, while, if I remember the figures aright, he said about 200 million gallons are

imported by the United Kingdom from other places, and that consequently, if a duty of, say, 6 annas a gallon is levied, it will fall on the oil-merchants of Burma, and that they will not be able to sell in the market in the United Kingdom and may have to close down the wells. I do not think that it is likely that the levy of duty will lead to this result, because, in spite of the freight that they have to pay over these thousands of miles, they are able to get the same price as before and make huge profits, as my Honourable friend Mr. Sethna has shown.

The HONOURABLE MR. PHIROZE SETHNA: In spite of the duty.

The HONOURABLE MR. LALUBHAI SAMALDAS: In spite of the duty. So that, if we put a duty of six annas, there is a duty in England . . .

The HONOURABLE MR. D. T. CHADWICK: I do not think there is any duty in England.

The HONOURABLE MR. PHIROZE SETHNA: I think it is six pence per gallon in England.

The HONOURABLE THE CHAIRMAN: I do not think the Honourable Member ought to be interrupted.

The HONOURABLE MR. LALUBHAI SAMALDAS: I do not think the trade of 20 millions will in any way suffer. Nor do I think the oil magnates will in any case have to suffer; I think they will be able to pay six annas per gallon and yet make a profit, though a smaller one, and India will gain Rs. 80 lakhs. That figure will, I think, be accepted both by the Honourable the Finance Secretary and by the Honourable Mr. Chadwick as the income at six annas per gallon on 20 million gallons. When India is trying to balance her own budget, she ought to try and look at all the available sources of income, and it is rather strange that it never occurred to the Finance Department to adopt this source of income and only to adopt another source which is the most unpopular tax in the country; but that is by the way, Sir.

Now, coming to kerosene, I do not think my Honourable friend Mr. Chadwick was quite correct when he said that, even if India had to import 50 to 80 millions of gallons from outside—if I am wrong in my figures I hope the Honourable Mr. Chadwick will correct me—as compared with 100 millions from Burma, the controlling factor will be the price of non-Burma petrol and that the price of kerosene would go up to the world prices. I do not think economically that is quite correct. If we import more than half of the 100 millions from Burma, it will be the Burma prices that will force the producers of foreign oil who export kerosene to this country to reduce their prices to the level of the Burma prices and not that the prices of the Burma oil will have to be raised to the level of other countries. I think too it is wrong to say that because one-third of the oil is to come from outside the price of the remaining two-thirds can be or ought to be raised to the level of the one-third. It should result in reducing the price of the one-third that is imported to the level of the Burma prices. It is a question of economics and I wish the Honourable Mr. Kale had been free to speak on the subject, but he is not now entitled to speak again. (*The Honourable Mr. V. G. Kale*: "I think I have a right to speak again on the Resolution.") On these grounds, Sir, I do not think that the fear that the Honourable Mr. Chadwick has in his mind that, if we put a duty of six annas on petrol, the income of petrol companies will be reduced and that, consequently, they will be forced to put up the

[Mr. Lalubhai Samaldas.]

price of kerosene, will be justified. I do not think there is any fear of that kind. Surely, they did not give a present out of magnanimity of 33 crores to India; they may say so now, but they must have made their profits; they must have thought that they could not get higher prices. It may be that they can now say "we pooled our prices in the interests of the country," but it is very difficult to believe that, Sir. But, even if it is so, I think the country ought to be prepared to take that risk of a supposed rise in the price of kerosene, which will never come off, and make Rs. 80 or 85 lakhs of revenue by taxing petrol.

The HONOURABLE MR. E. M. COOK (Finance Secretary): Mr. President, when Honourable Members from Bombay have a case to present in this Council, we almost invariably find that their case is presented with a lucidity and clarity that invariably shortens the debate and yet makes it a real one. On the present occasion, if I may say so, the Honourable Members who have spoken in support of this Resolution have not presented the issues with quite that clarity that we have been accustomed to expect, and this is my excuse for rising in this debate. I still feel considerably mystified as to the real reasons why it is sought to ask the Council to agree to an export duty of six annas per gallon on petrol. Now, it seems to me, Sir, that there are three possible lines that you can take in support of this duty. You may say, first of all, that it is necessary or desirable, in order to give the country more revenue at a time when we find much difficulty in balancing our budget. (*The Honourable Mr. Lalubhai Samaldas*: "Quite so.") That would be a perfectly good line of argument, if it were a correct one also. Secondly, you may say that this tax, apart from any fiscal reason, is necessary in order to bring down the price of petrol for the Indian consumer of petrol, namely, to the Indian motorist community, who are being fleeced by a profiteering trust. You may take either line of argument, or, possibly, you may take a combination of both and you may say that this export duty is that *rara avis* that every Finance Minister in the world is looking for, namely, new tax, which is going to make the commodity taxed cheaper to the consumer. I have not come across such a tax yet, but, if I have apprehended my friends opposite correctly, this is what they maintain is going to happen.

Now, Sir, first of all about the additional revenue. My Honourable friend Mr. Lalubhai Samaldas has said that he is surprised that the Finance Department, faced with an unbalanced budget, should not have adopted this obvious means of raising revenue. He does not imply, I suppose, that we have abstained from doing so out of consideration for Mr. Rockefeller, or for the Burma Oil Company, or for anybody else in the world. Why is it that we have had to reject this, purely as a finance measure? It is because we are convinced that we are going to get nothing out of it. The figures which the Honourable Mr. Chadwick gave about the proportion of India's petrol exported to the total world consumption are surely quite enough to convince anybody that an export duty on this commodity would be a failure. Personally, I admit I do not like export duties at all, but if ever there was a weaker case for an export duty, economically and financially, I do not think, if we searched our whole list of exports, we could find one. What are the facts? You have an export of 20 million gallons of petrol going to foreign countries. Is it seriously asserted that the foreign consumer is going to pay that

tax? What is the total world consumption of petrol? Why, the United Kingdom itself consumes more than 200 million gallons, and, I suppose the world's consumption must run into thousands of millions of gallons. The amount India can export is thus a drop in a bucket, the whole export would shut up just like that (indicates with a gesture). If I had to make an estimate of the revenue that we should get from this tax I might put in five lakhs for the first year; but certainly nothing for the second year.

Then, as regards protecting the Indian consumer. The Indian consumer of what? Of petrol. The Honourable Mr. Sethna tried to work, I am sure unsuccessfully, on the feelings of the Council by saying that the Honourable Mr. Chadwick had looked at the matter not from the point of view of the consumer but from that of the petrol companies. He certainly did not look at it primarily from the point of view of the petrol consumer, but he did most emphatically and most fairly look at it from the point of view of the kerosene consumer. Which consumer is more entitled to consideration in this matter—the poor people who use kerosene or the people, possibly of moderate means, who use petrol for their motor cars or motor lorries? The argument

about kerosene is not merely a debating one. Everyone knows perfectly well, it is common knowledge now, that the price of kerosene in India has been kept artificially low for a good many years. Now, who is going to pay this export duty on petrol? It is idle to contend that the foreign consumer is going to pay. It is equally idle to contend that the Oil Companies are going to pay. They are business men and they are not going to pay if they can possibly put it on somebody else. They will put it on the consumer of kerosene. That is a result which must follow: there is no other way out of it.

I was astonished that my Honourable friend Mr. Sethna was not able to controvert this point. Or rather, I was not astonished, but I was astonished that he, if I may say so, rather evaded the point. I must say that I feel some sympathy with the users of motor spirit in this country. They see that India is a producing country; a country—India and Burma—in which motor spirit is produced. But after all, are they quite sure that present conditions are going to continue? The price of petrol at the present moment in Calcutta is I believe Rs. 1-8 a gallon (that is, two shillings) without the excise. In England it is exactly Rs. 1-14.

**THE HONOURABLE SIR ARTHUR FROMM:** What is it in Bombay?

**THE HONOURABLE MR. E. M. COOK:** It is about two annas more, ignoring the excise. Well, Sir, people compare the internal prices in India with the prices at the present moment prevailing in Europe. Everyone knows that at the end of the War there were very large accumulated stocks of petrol—I believe, chiefly in America. Those stocks have been let loose and it is too early yet to say what the price of petrol in Europe is likely to be in the course of the next 12 months. But in any case, whatever the future comparison of prices be between India and Europe, I feel quite certain that, if one wants to put pressure on the Oil Companies or if one wants to cheapen the cost of petrol in India, this is not the way to do it.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan):** Sir, I do not at all agree with the Honourable Mr. Chadwick or with the Honourable Mr. Cook that the proposed export duty will fall on the consumer. What I say is that it will fall on the manufacturer who is now profiting enormously. The Honourable Mr.

[Rai Bahadur Lala Ram Saran Das.]

Kale and the Honourable Mr. Sethna have drawn the attention of the House to the combine between the Asiatic Oil Company and the Burma Oil Company. In my opening speech on the 19th of last month I referred to this combine, but I did not go into details. From the reply that was given to a question put in the other House by Mr. Spence, the Government said that the total import of petrol from America, the Straits and other foreign countries into India in 1921-1922 was 1,348 gallons only. It is now an open secret that the combine between these two Companies came into effect in 1920. If we take a survey of the prices of petrol from 1909 onwards, what do we find? From 1909 to 1915 the price of petrol in Rangoon was 13 annas a gallon, and in Calcutta it was Re. 1 a gallon. In 1916 the price rose by two annas. In 1917 and 1918 the prices advanced by another six annas. In 1919 the price rose all of a sudden to Rs. 1-12-6 in Calcutta and Rs. 1-7 in Rangoon. In 1920 we find that there was a fall in price, and the fall amounted to four annas a gallon. The price came down to Rs. 1-6. When we look for the reason why this fall occurred, we find that the Asiatic Oil Company, that is, the Shell Company, came into competition with the Burma Oil Company, and the Burma Oil Company had to reduce the price. Afterwards, both those Companies combined, the Assam Oil Company was bought over and, as the rumour goes, an understanding was come to between the two Companies that in India 60 per cent. of the petrol was to be sold by the B. O. C., and the other 40 per cent. was also to be found by the B. O. C. but was to be sold by the Shell Company in their tins as "Shell" petrol. Up till now the public have always been under the impression that the petrol they found closed in the Shell Company's tins was "Shell" petrol. It is now evident that the petrol is B. O. C. petrol although it is filled and sold in "Shell" tins. In 1921-22 the price of petrol rose to Rs. 1-14 in Calcutta and Rs. 1-10 in Rangoon. We find that on an average the difference between the Rangoon price and the Calcutta price has been about 4 annas a gallon. I have consulted some of my shipping friends and they tell me that this freight of 4 annas a gallon is enormous. Of course I am not an expert in Shipping. Perhaps my Honourable friend Sir Arthur Froom, who is a great expert in this line, might throw some light on this question. I personally consider that this difference of 4 annas is a very reasonable one. The Honourable Mr. Chadwick said that the annual export of petrol to foreign countries is about 20 million gallons. The other day the same Honourable Member, in reply to one of my questions, said that in 1919-1920 the export of petrol to foreign countries was over 36 million gallons. In this connection, Sir, as the Honourable Secretary for Commerce has said, in London the annual consumption of petrol is over 200 million gallons, and includes the major share of the 20 million gallons exported from Burma to England. And then he says that an export duty on petrol will restrict the export of petrol, and that the income which we do expect from this export duty will be simply nominal. I do not agree with that view, Sir, because what we find is that the B. O. C. at present with a capital of about 5 million sterling last year, I mean for the first half of the year 1922, is said to have declared a dividend of 40 per cent. Its £1 shares in the month of January this year were quoted at from £5½ to £5¾; that is, the value of the £1 share is more than five times its face value. Last year, in 1922, these shares rose to £8 7/32. When the Company is making such huge profits, it can very easily afford to pay an export duty of 6 annas

a gallon out of its own funds. What do we see, Sir? The Asiatic Oil Company is a much bigger company with a great many oil fields behind it and its activities are not confined to only one province but extend to many countries. The Shell Company with a capital of over £19 millions, had a profit for the same half year of 35 per cent.; its £1 shares were quoted in January last at about four times their face value. My reason for giving these comparative figures is that the Shell Company, although it had a bigger capital than the Burma Oil Company and had the same markets, excepting India, has not made the same profit as the B. O. C. has with a smaller capital. I want to prove by this that B. O. C. is making most of its profits by its sales in India. Otherwise its profits would have been almost the same as those of other companies. It shows that the B. O. C. is making that huge profit out of the Indian consumer.

The Honourable Mr. Chadwick and the Honourable Mr. Cook have tried to make a big case about kerosine oil. I have not been able to follow their arguments; at least I have not been convinced by them. What do I find as regards the price of kerosine? "Victoria" kerosine oil of the B. O. C. to which my Honourable friend seems to refer is selling in Calcutta at Rs. 5-11-0 for 8 gallons or 2 tins and that oil certainly is the ruling factor in the prices of burning oils. The next grade of oil which we find is the American "Elephant" Brand oil, the present price of which is Rs. 7-8 for two tins. In case we deduct import duty of 2½ annas per gallon from American and take out the excise duty of one anna a gallon from the B. O. C. prices we find there is only a difference of two annas a gallon. That is not much. We do not consider that the B. O. C., which wants to take all possible profits, has been magnanimous enough to give India a big concession. The Attock Oil Company, which is just in its infancy, is selling its "Squirrel" Brand kerosine oil at a cheaper rate than even the "Victoria" Brand. The Honourable Mr. Cook says—and I am thankful to him for his sympathy towards India's poor people—that for the sake of kerosine oil the export duty on petrol ought to be ignored. In case the Government of India is so keen on the interests of the poor people, why should they impose an import duty of 2½ annas per gallon on kerosine and one anna excise duty on the same? Is that not inconsistent? In case they want that the kerosine oil must become cheap, let them remove that duty. Remove the excise also and let the people gain. My own contention is that the idea of the Government that the export duty on petrol will have a restrictive effect on export is quite wrong. I am sanguine that the amount of export duty will be almost what we contemplate.

The Honourable Mr. Chadwick intervened in the debate with the remark that in England there was no duty on petrol. Of course in the theoretical sense of the term he may be right; but what we find in practice is that petrol is selling at 11½ annas a gallon in New York and 8½ annas in Belgium but it fetches a price of Rs. 1-8-0 in London. Why? That point I have not been able to understand. We find, however, that there is an inflation in prices and that the Government of India whether directly or indirectly has not taken any steps to do away with the combination and monopoly which these two big monstrous oil concerns have made.

Another point, Sir, which the Honourable Mr. Chadwick has mentioned is that it is the result of competition that the prices in England and other world markets are low. That is quite right. But in this case the Government of India themselves have not allowed competition to come in as far

[Rai Bahadur Lala Ram Saran Das.]

as India is, concerned. If competition had been allowed or the monopoly broken these prices would never have existed. The Honourable Mr. Cook referred to another point. When the Standard Oil Company (Mr. Rockefeller) wanted to acquire some interests in Burma, Lord Curzon, who was then the Governor General of India, did not allow them, in the interests of this country, to acquire lands, and we Indians at that time thought that great good had been done. But now we find that if the American Company could have started and established in Burma, the B. O. Company would not have had the monopoly which they at present enjoy. The Honourable Mr. Chadwick said that the quantity of petrol exported was 20 million gallons only; I hold, Sir, that the quantity of petrol produced in Burma is daily increasing and the exports in the coming years will be much more than the Honourable Member anticipates. My Honourable friend, Colonel Sir Umar Hayat Khan, said that in these days we require cheap transport and as two more big colonies in the Punjab and elsewhere will come into existence very soon we will require a great number of bullocks for those colonies for agricultural purposes. Even now, Sir, in the great cities and in the commercial towns we find paucity of bullock carts, which are being overloaded notwithstanding the legislation against it. Unless petrol prices are brought down the agricultural community too will suffer. In these days when we have deficit budgets, new railway constructions are out of the question. Communications are to be established and for that we require petrol lorries, petrol omnibuses, all for agricultural improvements, because it is in the interest of the agriculturist to get as much price for his produce as he possibly can. In petrol lorries, freights are much cheaper than they are in the country carts particularly for long distances. So, in the case even of the agriculturist a fall in price of petrol will be greatly appreciated. The Honourable Mr. Cook remarked that our policy of levying an export duty on petrol is ghastly fatal. No, I do not agree there, Sir, at all. It will not be ghastly fatal. It will be productive and will bring in a good revenue. With these remarks, Sir, I commend this Resolution as amended by my Honourable friend Professor Kale for favourable consideration of this Honourable House.

The HONOURABLE MR. D. T. CHADWICK: Sir, I do not think I need take much time to reply. I have laid all the facts before the House. Some of those facts and the deductions and conclusions from them are perhaps new to students of this problem and will receive further consideration from those who have been and are examining this question. But I did not put forth the point of view of the oil companies. I gave the considerations which guided the Government. It is clear that Government has examined the matter very thoroughly. The fact that kerosene oil is to-day at our present price, Rs. 4-4-6—my Honourable friend quoted the price in tins and thereby brought in complications, while I quoted in bulk—that the price is as low as Rs. 4-4-6 is due to this arrangement which was come to in 1919 between the Burma Oil Company and the Asiatic Petroleum Company, of which notice was given in the press at the time and which still holds. We are convinced that we should not get the revenue expected from this tax; we are also convinced that it would mean that the companies would in all probability recover whatever we put upon them from the market in which they can do it most easily. Obviously the one way by which they could do this most easily is by raising the price of kerosene. It would be a very costly thing to the country as a whole and it would give practically nothing or very little to the State.

The HONOURABLE THE CHAIRMAN: The Honourable Mr. Kale's amendment is now before the House, *vis* :

"That after the word 'duty' the words of not less than 6 annas per gallon' be added."

I will first put the amendment, and if it is carried, then I will put the Resolution as amended.

The HONOURABLE MR. PHIROZE SETHNA: Will the Honourable the Government Member in charge allow the officials to vote as they please in a question of this public importance?

The HONOURABLE THE CHAIRMAN: As the Honourable Member in charge has not said anything, I shall now put the amendment to the vote.

The Council will now divide.

The HONOURABLE MR. PHIROZE SETHNA: May I now ask if, in the absence of the President, when you are in the Chair, you can record your vote as a Member.

The HONOURABLE THE CHAIRMAN: I will not pronounce any opinion on that question. I decide not to vote.

The HONOURABLE MR. PHIROZE SETHNA: I want a ruling; I did not ask what your personal intentions were.

The Council divided as follows:

AYES—14.

Ayyangar, Mr. K. V. R.  
Chettiyar, Mr. S. M. A.  
Harnam Singh, Raja Sir.  
Kale, Mr. V. G.  
Lal Chand, Lieut.  
Lalubhai Samaldas, Mr.  
Muhammad Hussain, Mr. Ali Baksh

Ram Saran Das, Mr.  
Ray, Raja P. N.  
Sethna, Mr. P. C.  
Srinivasa Sastri, Rt. Hon. V. S.  
Umar Hayat Khan, Col. Sir.  
Vasudeva Raja, Raja.  
Zulfiqar Ali Khan, Sir.

NOES—18.

Amin-ul-Islam, Mr.  
Baker, Mr. C. M.  
Barron, Mr. C. A.  
Butler, Mr. M. S. D.  
Chadwick, Mr. D. T.  
Cook, Mr. E. M.  
Crerar, Mr. J.  
Forrest, Mr. H. T. S.  
Jha, Dr. G. N.

MacWatt, Major-General R. C.  
Miller, Sir Leslie.  
Muzammil-ullah Khan, Nawab.  
Rawlinson, H. E. Lord.  
Sarma, Mr. B. N.  
Shafi, Dr. Mian Sir Muhammad.  
Tek Chand, Mr.  
Thompson, Mr. J. P.  
Zahir-ud-din, Mr.

The motion was negatived.

The HONOURABLE THE CHAIRMAN: I shall now place the original proposition before the House:

"This Council recommends to the Governor General in Council to take into immediate consideration the desirability of imposing a duty on benzine and petrol exported from Burma and other Indian Provinces to foreign countries."

The Council will now divide.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: I will not press for a division in the circumstances.

The Resolution was negatived.

## RESOLUTION *RE* RIGHTS AND STATUS OF INDIANS IN KENYA.

The RIGHT HONOURABLE V. S. SRINIVASA SASTRI (Madras: Non-Muhammadian): "Sir, I beg to move this Resolution:

"That this Council recommends to the Governor General in Council that he be pleased to convey by telegraphic message to His Majesty's Government the view of this Council that no settlement regarding the political rights and status of Indian settlers in the Crown Colony of Kenya would satisfy the people of India unless Indians in Kenya are granted full and equal rights of citizenship with European settlers.

And this Council records its indignant protest at the reported threats of violence on the part of the latter and fully trusts that His Majesty's Government will take effective steps to prevent any such outbreak and to afford them the necessary protection.

And this Council records its emphatic conviction that no restrictions on new immigration from India will be acceptable to public opinion here."

Sir, at the outset may I be permitted to draw the attention of the Council to a slight grammatical inaccuracy in the Resolution? In the second part the last words are "and to afford them the necessary protection," but the word "them" is without a proper antecedent. I think, Sir, if you will allow a small verbal amendment to be moved, it might be changed into "the Indians resident in Kenya."

The HONOURABLE THE CHAIRMAN: Yes.

The RIGHT HONOURABLE V. S. SRINIVASA SASTRI: Thank you. In speaking on this Resolution it is my great desire to avoid all rhetoric or attempt to excite feelings. I will confine myself merely to a statement of view because I believe that the facts in themselves are such that they carry their own conclusion. In the first place, I think in the course of public discussion upon this subject, there has been some mistake of an important character which, if I may, I would try to put right. Those who have advocated the Indian case have grounded themselves more or less expressly upon the Resolution which in the year 1921 the Imperial Conference of Prime Ministers adopted on the subject. I venture to think, having been a party to that Resolution, that it is somewhat of a serious mistake. That Resolution, Sir, was the result of a case that the Government of India put forward. I am in a position to say, and the public are in a position to judge from the memorandum of the Government of India, published at the time, that our case did not concern any of the Crown Colonies. It was concerned solely with the self-governing Dominions of the Empire, and the case was also argued, as I have a right to state, solely on the ground that it concerned itself with the self-governing Dominions of the Empire. The case for the Crown Colonies rests on equity and does not derive in the least from that Resolution. We have got pledges of equity dating far back in the history of India. We have got it asserted again and again on high and solemn authority and it did not require the Resolution of the Imperial Conference of the year 1921 for the first time to give vitality to our claim for equity of treatment in the Crown Colonies. I make this repudiation at this early stage of my speech because I am particularly anxious that nobody here should carry the impression that the implication of that Resolution applies to Kenya Colony. That Resolution cites in the very beginning the right of every community in the Empire to exclude elements of the Empire's population which it does not care to assimilate. We have given that right to the self-governing Dominions and to India. We have not given that right, and if the people of India have a voice in the matter, they will not allow the right to be given, to the Crown Colonies. The whole claim of

the self-governing Dominions in the matter is based upon the fact that, whatever the equities, whatever the rights and wrongs of the case, a people who can govern themselves, have a right in the last resort to say who shall compose the population. The Crown Colonies, neither Ceylon, nor Fiji, nor Mauritius, nor Kenya, has yet acquired the right to say who shall form the population. If it is to be determined entirely by the Colonial Office, the Colonial Office being a part of the British Cabinet cannot settle the matter without amicable arrangements with the India Office; and the Colonial Office and the India Office, agreeing together, will determine these matters and not the people of Kenya. I am very anxious to make this repudiation also for the reason that, when this is once granted, the expression "the people of Kenya", "the community resident in Kenya" has, by a sort of verbal jugglery which I cannot understand, been applied solely to the white population of Kenya as if they were the only community who had a right to determine who shall go to Kenya and who shall not.

Having made that point perfectly clear, so far as I can, let me now proceed to say that our claim to equality is, even as regards Kenya, rather academic and theoretical to-day. We assert the right to equality but we are quite content—and I wish more general recognition were given to that circumstance than has been given to it before—in the achievement of equality to proceed by stages. For what are the demands of our people in Kenya and what are the demands that the Government of India and the Secretary of State for India have so long supported? In the first place, we do not ask for universal suffrage as the European community there enjoy to-day. We do not ask that the Legislative Council of Kenya, such as it is, should be composed of elements giving to the Indians a proportionate representation, either considering the number of the population or considering the amount of taxation that they have to pay towards the general support of the Colony. We are content that we should be less than a half in the legislature, and, so far as the Executive Government is concerned, no more than a bare admission of the Indian element has been conceded. If I may be permitted to say so, nothing more has yet arisen in the shape of a definite demand of our people. It is then, Sir, considered on the merits of the question, a partial, a very partial, fulfilment of the rights of equality that is being asked for. As to the franchise, we have expressly agreed that such a qualification should be fixed as will enfranchise only 10 per cent. of the resident Indians. Now, upon what ground is even this modest demand for a partial fulfilment of equality, where the full assertion of equality would have been eminently justified resisted? Sir, I think it is best in answering the question to go to the root of the matter at once and without hesitation. The root of the matter I had personal opportunity of understanding. Last year, there were in London certain representatives of the white Kenya community, come to press their views on the authorities, and I was privileged to be present at a private discussion in which their claims were put forward. I may at once state that their claims were clear and were firm. East Africa, Sir, and the Colony of Kenya with which we are particularly concerned, is unfortunately dominated by the spirit of South Africa. It is that spirit that reigns there. The spirit of South Africa to those who have understood it is to be summed up in two expressions. The first is "no admission of equality with Indians": the second is "the expulsion of Indians, if possible." There is no mistake about that. I heard these things myself, and the residents who came there told us that it was their desire as early as possible to get into the Union of South Africa as an African Empire, so that Kenya is now to be prepared

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in its treatment of the Indian element to enter the future African Confederation. That means clearly that Indians are to be expelled and such as happen to be residents are to be denied in so many words that there would be anything like equality accorded to them. Why, Sir, it was my painful business that day to listen continually to statements of this kind: "We will not allow this equality which is an academic theory, which is the folly of the Colonial Office; we cannot have it here. Let people come out there and see for themselves." And, in order to enforce this point of view, all things that we have seen usually on such occasions are being enacted.

Sir, it is quite extraordinary that the facts of history are even being denied to support this claim. History is falsified and even the facts that the Indian was on the soil before the white settler appeared, that he has done a good deal to make the Kenya Colony what it is are being denied. And, on the occasion that I have referred to I further heard it said that if the Indian has done something as any human being would have done if he were resident in a place, that thing could have been done for the Kenya Colony if the African native was educated for the purpose, and that it was not necessary, that it was not desirable, that the Indians should be allowed to base their claim on the mere fact that they were there, and that they did something to build up the railway or to carry on the trade. If that was done, it was a mistake and it should be modified at the earliest possible opportunity. The Colonial Office were spoken in terms of the utmost disrespect and contempt and everybody can see now in the papers that my unfortunate friend Major the Right Honourable Ormsby Gore has come in for a good deal of abuse at the hands of the African press for the simple reason that he stands up for the dignity, for the righteousness and for the good name of the British Empire.

With regard to the natives of Africa, Sir, as I have said to the Council already, I will try not to raise feeling. The natives of Africa are, as everybody knows, not quite civilised. They are advancing by leaps and bounds. Great efforts are necessary to pull them up along the line of evolution. But will history answer the question in the affirmative, that when the European exploiter, the European colonist, has gone abroad and come into contact with semi-savage tribes the contact has been beneficial to the latter invariably? Could it be claimed to the credit of the European nations that they have been careful, that they have been solicitous, to observe scrupulously the rights and serve the needs of a semi-barbarous population? Assuming, however, that here and there such a statement could be made with an approximation to the truth, we are in a position to say from information that comes over that the European settlers in East Africa can by no means claim to come under this humane description. Well, Sir, innumerable instances could be quoted to show that their treatment of the East African native is by no means marked by a consideration of common humanity. I will only read one or two extracts to show the spirit in which the thing is done.

The HONOURABLE MR. B. N. SARMA (Revenue and Agriculture Member): May I suggest, Sir, that we are dealing now with the question of Indians in East Africa, and having regard to the state of feeling it might be desirable not to dwell too long upon the question of British *versus* natives of East Africa.

The HONOURABLE THE CHAIRMAN: The Honourable Member has not yet done so. His extract, when he reads it, will show us what he means. I will allow the Honourable Member to proceed. •

The RIGHT HONOURABLE V. S. SRINIVASA SASTRI: Sir, I was only saying that as regards the East African native of the soil, it is not the Indian but the White settler from whom he has to be protected. It is that point which I was trying to labour, as it is being exploited in England that the introduction of the Indian and his maintenance in full rights of citizenship would be injurious to the development of the East African native. Our whole point is that in so far as that humane object is concerned, we are far more useful in East Africa than the White settlers. I will only read one extract, Sir. This is the quotation that I wish to read from a paper which was addressed to the Head of the Government in East Africa by the Indian residents:

“Again a party consisting of members of the same school of thought, including amongst them a prominent member of the present Reform Party, assembled in front of the Nairobi Court House, and in the presence of the Magistrate and Police Officer and in the teeth of the remonstrances from the former and checking by the latter, they publicly flogged certain innocent natives on the plea that it was useless to take them to court to be dealt with according to the law, etc., etc.”

I only mention this to show that Indians could not have done such a thing; but the White settlers in Kenya seem to have a notion of ordered life in a community very different to ourselves. On another occasion it would appear that they did something which was most extraordinary. A number of Europeans, including some prominent members of the present Reform Party, marched up in an unlawful assembly to Government House, insulted Sir James Hasler, the then representative of His Majesty's Government, threw stones at Government House, shouted to Sir James to resign his office, and behaved themselves in such a rebellious manner simply because the then Governor disagreed with them in their views and policies of forced labour. I do not wish to contemplate what would happen if a number of people came to the Imperial Secretariat in Delhi and behaved in that manner. His Excellency the Commander-in-Chief would have something to say to that.

Now it is a fact that the White settlers of Kenya have been, through the weakness of that Government, led to believe that they can deal shortly and summarily even with their Government, and when they threaten violence in case equality is forced upon them, they are not bluffing by any means. When the Honourable Member in charge of this subject spoke in another place, he seemed to regard these assertions as mere threats which were never intended to be carried into effect. I thought at the time that he was much too optimistic, and I hope the news that has since come over has made him also change his opinion somewhat. Sir, I can only say that our people, whether in India or abroad, have shown such humility, such respect for order, such patience under the greatest provocation, and such forbearance and modesty in their demands for perfectly established rights, that what an American lady told me recently is perfectly true, that we Indians are about the only Christians left now, omitting the Chinese, on the face of the earth! Honourable Members will notice that there is a third clause in my Resolution. I wish to say a few words on that subject.

The third clause protests against immigration restrictions which it is the intention, it would appear, of the Colonial Office, to enact for the first

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time. In the other place when this matter was discussed recently, this matter was not brought to the attention of the authorities in the same way. But immigration and the control of immigration in respect of Kenya Colony is so important that I ask your leave, Sir, and the leave of the Council while I keep them for a few minutes on this subject.

It has been admitted and admitted on authority that is no longer questionable that India is an equal partner in the British Empire with Great Britain and with the dominions. It is a proposition with an enormous variety of implications. I do not believe that the Indian people will ever take advantage of that claim and draw out all the implications and insist on each one of them. But on this they will. We are three hundred millions in this country. If eighty millions of people must have an outlet and if they find enormous outlets, vast unoccupied spaces all over the world, and keep them all to themselves and coop up the three hundred millions within the limits of India and say to them "You have no outlet, but you are equal partners in the Empire nevertheless", that is a proposition to which it is very hard for us to assent. I can understand, although I cannot approve, its being said that other parts of the Empire with vast unpeopled spaces were not conquered by Indians, were not settled by Indians. Perhaps it is a sort of answer; I will not pause to examine it; but the case of East Africa, the case of Kenya Colony is clean. There can be no gainsaying that it cannot be called a British colony and it cannot be allowed to become a British colony. If anything it is a British Indian colony. Indians having somewhat prior rights, but because they are politically weak and cannot assert their rights in full, they are quite willing to share their rights equally with the British people. It ought to be considered a British Indian colony and we cannot therefore allow the Right Honourable Winston Churchill's assertion that Kenya must be kept a characteristically British colony. Moreover, look at the irony of the situation. Quite recently a sum of £10,000 has been taken from the public revenues of Kenya colony to which Indians contribute, I understand, somewhat over 50 per cent., and set apart for establishment of a Publicity Bureau in London with the object of attracting English settlers to that colony. At that very time and while public money to which Indians contribute is freely used for the purpose of attracting White settlers, it is proposed—what an irony of things—to enact restrictions as to Indian immigration which will have the effect of excluding Indians altogether from India. It is impossible for a self-respecting people to submit to such bare-faced violation of the fundamental equities of the case. We are afraid that under pressure it is quite possible that the Colonial Office may yield. Sir, speaking on this occasion I will, as I have done very frequently before, acknowledge on the part of the Indian public with the fullest appreciation and gratitude the way in which the Government of India and the Secretary of State for India have throughout championed our cause in this matter. We only beg them to keep the fight up a little while longer. If we lose in Kenya, the result is we lose all along the line. The Dominions where I received such hospitality and such sympathetic hearing when I presented our case, the Dominions will be perfectly justified, when a successor of mine goes round hereafter, in turning on him and saying, "What is the case in the Crown Colonies which are administered by the British Cabinet themselves? How can the British Cabinet solemnly pass a Resolution and send you out to seek fulfilment thereof, while its spirit is being violated by the British Cabinet themselves?" Losing in Kenya, we

lose therefore in the self-governing dominions; we lose all round, and its moral reaction on the progress of India itself towards the status of a dominion need not be described in detail. Sir, we cannot afford to lose there. There will be very few friends left in India to plead for the cause of the British Empire. You will wipe out the friends of Britain in India by any such settlement. Britain herself in the eyes of the world will be generally condemned as having fallen a victim to moral decay. For, after this war and the amount of brotherhood that has really come up amongst the nations after the League of Nations, and solemn pledges on the part of the British Empire that they are only a lesser League of Nations within the larger League of Nations, the world will be quite justified in passing upon the British Empire the judgment that it has become subject to moral decay, and moral decay cannot long precede material decay. I will say nothing more, Sir, but commend the Resolution to the acceptance of the Council.

The Council then adjourned for Lunch till Half past Two of the Clock.

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The Council re-assembled at Half past Two of the Clock. The Honourable Sir Maneckji Dadabhoy was in the Chair.

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The HONOURABLE THE CHAIRMAN: The Council will now resume discussion of the Right Honourable Srinivasa Sastri's proposition.

The HONOURABLE MR. LAIUBHAI SAMALDAS (Bombay: Non-Muhammadan): Sir, the high level to which my Right Honourable friend has raised the debate on this question may make it rather difficult for us to follow in the same vein. Moreover, we may not be able to restrain ourselves in the same way as my Right Honourable friend has done. The feeling in the country has been, Sir, very strong, and, if I may say so, to whichever party people may belong, the country as a whole is strongly agitated at the attitude of the White settlers in Kenya. Before I speak on the Resolution proper, may I, Sir, with your permission, remove a misapprehension—I believe it was a misapprehension in the mind of my Right Honourable friend? Whenever this question was discussed in this Council we never mixed up the Dominions with Crown Colonies. If the Resolution passed at the Imperial Conference was brought in, it was merely to show that if the Dominions agreed to reciprocity, much more should the Crown Colonies give liberty and freedom to our people. It was merely to show the strength of our position that we referred to it. We realised that in Crown Colonies we have greater rights and the White settlers have practically no rights excepting those that were given to them without our sanction by Lord Milner's despatch. Sir, the Resolution is divided into three portions, and I lay the greatest stress on the last portion. So, I speak on it first. That is:

“ And this Council records its emphatic conviction that no restrictions on new immigration from India will be acceptable to public opinion here.”

During the last two years, Sir, we had two debates in this Council on that subject and on each occasion this point has been put before the Council as strongly as possible. An attempt is made in the name of equality to restrict the immigration by raising the deposits to be given by an immigrant

[Mr. La[ubhai Samaldas.]

before he goes there. As it was shown here, the amount ought to suffice for sending the man back if he was found to be undesirable. Now, in the name of equality of status the amount of that deposit is being increased more than 3 times, and we feel that it is done not for the sake of equality but under the name of that charming word to keep back many of our countrymen from entering the Colonies and that is what we resent most. Then, again, another restriction has been put upon immigration and that is that the immigrant must have knowledge of the English language. That also, Sir, was brought in the name of equality and as was shown in another place, it meant that while a husband who knew English could go there, a wife or a daughter who did not know English could not. That is a restriction that we do not want to be put and we want that the old rule as it stands should not be altered in any way. The Resolution says "That no restrictions on new immigration from India will be acceptable". I believe what my Right Honourable friend wants and what we all want is that no new restrictions will be acceptable. The old restrictions are acceptable and we do not object to them. I think I am right and I hope my Honourable friend will tell me if that is so. We do not want that Kenya—to which I add Uganda and Tanganyika—should be turned into a White colony. That is the attempt that is being made by the White settlers in the Colony, and that is an attempt that we want to thwart, and in that attempt we want the assistance of the Government of India. I take this opportunity of expressing the thankfulness of this House and the country to the Honourable Member in charge and to the Government of India and to the Secretary of State for India for the strong fight that they are putting up for our countrymen in Kenya. We want them to continue that fight. We want them not to be cowed down by the threats that are being held at us by the White settlers. As my Right Honourable friend says, the threats may not be quite false. There have been instances when even the Governor was stoned. There have been equally bad instances.—I would not quote them because I am afraid of my Honourable friend getting up and saying that I am not in order—but there have been similar cases where not only natives have been shot and assaulted, but White settlers have entered into the married quarters of Indians, threatened to shoot and set fire to the whole location. Fortunately they were prevented from doing so. We do not want these things to be repeated. Our countrymen there are as mild as the Indians here are mild, and if they protest, they protest because they know that physical strength is with the other party, and even if they were strong, the Indians will not under any circumstances, unless the provocation is very strong, take law into their hands as the other communities would do. That is another reason, Sir, why we want Government to take immediate action. I dare say many of the Members of this House must have seen the letters which His Highness the Aga Khan wrote to the press about a month and a half ago. He suggested two alternatives, one was to appeal to the Indians here to send a deputation to Kenya to guide the Indians and try to bring about an amicable settlement between the Indians and the White settlers there. He also made appeal to the non-official Europeans in this country, and, may I add, a similar appeal to the officials in this country to use their influence, whatever they have, to see that this racial bitterness there does not spread to this country. I think we can very well count upon the good-will of my non-official European brethren in this country, and I am quite sure I can equally count upon the good-will of the officials also. If we all join our hands together in a friendly spirit to restore peace where there is

extreme bitterness and fear of riots and lawlessness then we will be rendering a great service not only to this country but I believe to the whole of the British Empire, because once this poison of anti-British or anti-White spreads from East Africa to this country, I do not know where it shall end. The country at present has strong faith in the justice of the Imperial Government and in the British Parliament and if once that faith is shaken, we do not know where the country will be. It is not an idle threat that I am giving, but I say this because I believe, we in this House are the best friends of the British Empire and we want our connection with the British Empire to continue. I appeal to my brethren here, both official and non-official, and I want them to support this Resolution whole-heartedly, so that there may be no mistake that at least in this House there is no difference of opinion as regards the solution of this problem.

THE HONOURABLE MR. H. T. S. FORREST (Bihar and Orissa : Nominated Official): Sir, I rise to a point of order. I submit that this Resolution is out of order inasmuch as it contravenes provision (a) of Rule 23. "A Resolution should be clearly and precisely expressed and shall raise substantially one definite issue." I submit to you that the Resolution, as drafted, does not raise one definite issue; it raises several issues, at least two, and possibly three. The issue raised in the last paragraph is not the same as either of the issues raised in the two previous paragraphs.

THE HONOURABLE THE CHAIRMAN: I cannot allow the Honourable Member to raise an objection at this late stage. If the Honourable Member thought that the Resolution was not properly worded, the proper time for him to have taken this objection was before the Right Honourable Srinivasa Sastri moved his Resolution. I therefore allow the debate to continue.

THE HONOURABLE MR. LALUBHAI SAMALDAS: I have not finished. I know I have very little time and I will try to finish at once. My Right Honourable friend said, referring to the common electoral roll, that the Indians in Kenya and their supporters here had agreed to a roll which gave a franchise to 10 per cent. of the community. May I say we did not agree to it as a final solution; we have done it merely as a compromise and merely to show our desire to live amicably with the White settlers there. We do not wish that Kenya should be joined to South Africa. There is that danger. As the Members of the Council will remember, an appeal was made to General Smutts to come and annex Kenya. We want that effort to be thwarted and it can only be done if the Government of India, with the whole-hearted support of both the Houses of Legislature and Indians and Englishmen in this country, back our countrymen in that part of the world. We do not want it to be said that Indians in Tanganyika under German rule were better treated than they are treated by the English and to keep up the fair name of Britain all over the world we must all unite and pass this Resolution.

THE HONOURABLE DIWAN BAHADUR S. M. ANNAMALAI CHETTIYAR (Madras : Non-Muhammadan): Sir, this question is coming up again and again and no one need wonder at it. The issue at stake is so enormous, nothing less than the self-respect of India and her ability to protect her children abroad. Sir, this reminds me of a small story I have heard, and I ask the Honourable Members to permit me to indulge for a couple of minutes, not more, in the narration of that story, which appears to my mind to be exactly to the point. Sir, there was a king and a famous musician from a long distance came to his court and wanted to show his excellence in the

[Diwan Bahadur S. M. Annamalai Chettiyar.]

art. His songs were so melodious that the king frequently ran into raptures and said, "Give him a hundred rupees" and every song that he sang swelled his verbal reward from hundreds to thousands. The poor musician exhausted himself in his efforts because he thought that he would be the recipient of a handsome fortune, for that was what the promises made to his ear came to. But alas, what was his surprise and disappointment at the end when he asked for the reward. "Ah! my friend," said the king, "your music has been most pleasing to my ear, and my words have been most pleasing to your ear. Your songs have made me happy, and my words have made you equally happy; there ends the whole thing. Why do you worry yourself then about the hard cash?" This is the story, Sir, and the House can very well imagine the feelings of the unfortunate musician who was sent away empty-handed with empty words for all his pains. If we put Mr. Winston Churchill and one or two other statesmen for the king, and the Indians for the musician, the promises of equal status for the verbal rewards, and the Kenya question for the hard cash, we have the whole thing in a nutshell. Sir, words are poured forth in plenty, but deeds are very scarce. Had those responsible for the administration of Kenya in England given effect to the Resolution of 1921, we would not have witnessed the unedifying spectacle of civilized settlers holding out open threats of violence against their fellow-subjects. Rightly or wrongly, the impression prevails that the attitude of the White settlers in Kenya is due to the backing up at Home. The other day we read in the "Pioneer" that the Governor of Kenya is shortly to meet the Colonial Secretary with the representatives of Europeans of Kenya, and not a word has been said about Indian representation. Sir, here I am afraid the Honourable Mr. Sarma would ask us not to believe this and other telegrams respecting threats of violence, but in the majority of cases we are used to believe Reuters. Sir, here I may be permitted to suggest the idea of sending a mission to Kenya. I am sure this mission to a Crown Colony will be more useful than the one undertaken by my friend the Right Honourable Mr. Sastri to the Colonies with Dominion status. His great powers of eloquence and persuasion may, I believe, appeal to the White settlers in Kenya and perhaps be more effective. I may observe that the Government of India are whole-heartedly with us in this matter. I do not for a moment doubt their sincerity. They have done and are doing their very best for us. All praise be to them for this help. But they should impress upon the Home Government that the people of India will never be satisfied with anything less than full and equal rights of citizenship in Kenya. I believe they have already done so. They should tell those at the helm of affairs in London, that mere promises of equal status alone would not satisfy the Indians. If the Home Government plead their inability to give us what was promised in this particular question we, Sir, here in this country, would refuse to believe it. Kenya is a Crown Colony under the direct control of the Home Government and a handful of 8,000 settlers cannot rebel against the decision of the Imperial Cabinet. We want justice and nothing but justice.

The HONOURABLE SIR ARTHUR FROM (Bombay Chamber of Commerce): Sir, the views of many Members of this Council, if not of all the Members of this Council, have been put forward with such clarity by my high Honourable friend Srinivasa Sastri that I do not propose further to enlarge upon them now. But, Sir, I must say that I do not quite understand how far this Resolution is intended to go. It appears on the paper before us in three paragraphs. The first paragraph of the Resolution

“ recommends to the Governor General in Council that he be pleased to convey by telegraphic message to His Majesty's Government ” and so on; down to the words “ European settlers ”. Then we come to the second paragraph and I do not follow whether the second paragraph is also intended to be telegraphed. As the Resolution reads, it does not. Then we come to the third paragraph. It is not at all clear whether the Council merely wishes to record its emphatic conviction that no restrictions on new immigration from India will be acceptable to public opinion here or whether that is also intended to be telegraphed. As the Resolution is framed, I submit, Sir, that only the first paragraph is required to be telegraphed. What the Council is supposed to understand from the second and third paragraphs is not at all clear.

The HONOURABLE THE CHAIRMAN: I think the position is quite clear to my mind and I presume to the mind of the Council. It is intended that the whole of the Resolution should be telegraphed, for the simple reason that the other two clauses form part and parcel of the whole Resolution. I think that is the idea of the Right Honourable Srinivasa Sastri.

The RIGHT HONOURABLE V. S. SRINIVASA SASTRI: It is, Sir.

The HONOURABLE MR. PHIROZE SETHNA (Bombay: Non-Muhamadan): Sir, it is very regrettable indeed that the hostile attitude displayed by the European settlers against the Indians in Kenya Colony has not abated at all since we discussed this question in this House nearly eighteen months back. On the contrary, the situation is much worse and has now assumed a phase when it will tax and perhaps test the ability and the statesmanship of the Empire's leaders. All honour to the Government of India for the firm stand they have made in this matter and if only the Colonial Secretary and the Cabinet at Home will help us in the matter, I am sure Indians will receive justice in Kenya Colony at the hands of the Imperial Government.

The European settlers in Kenya claim that they are entitled to special privileges because they were specially invited to proceed there on the assurance that Kenya would always remain a white man's colony. To substantiate this statement they have so far never produced any documentary evidence. On the contrary, I may be allowed to repeat what I did mention on the previous occasion in this House that Professor Keith of the Edinburgh University, one of the majority signatories to the report on the subject, has laid down clearly that there were no documents at all to prove the contention of the European settlers. He asserted that Government never invited them to go over and colonise that part of the world. He points out further that such a promise and such a prospect to any colonists could only be held out by the Imperial Government and the Imperial Government alone. This, therefore, disposes of their principal argument which we know is their stoutest stronghold.

The basis of difference between the two communities in that Colony it is said is economical on the European side, sentimental on the side of the Indian. If it is economical on the side of the European settlers then with the Right Honourable the Mover of this Resolution may I ask what right have the European settlers to demand and dictate terms as they are evidently doing? Are the Europeans there in a majority? Is not the Indian population compared to Europeans in the proportion of more than 2 to 1 and nearer 3 to 1? And if the natives of the soil are consulted, will they not every time side with the Indians, because of their

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having so much in common and because, to refer to the incident read out by the Right Honourable the Mover, they will never expect from Indians treatment of the kind that he read out, namely, of being publicly flogged in the streets. Sir, Indians have been there for ages past, they have been there since the time of Vasco de Gama and even before, and if they are in the majority, should not the Imperial Government respect the views of the majority as they have been doing elsewhere? In fact it is now recognised by all nations since the great war that it is the mandate of the majority that has to be carried out. And has not the Imperial Government been doing so throughout the Empire? During only last week the Premier announced in the House of Commons that Government intended to give effect to the result of the recent referendum in Rhodesia and grant it responsible self-government as the majority desired instead of uniting it to South Africa. The majority in Kenya Colony only demand equal status which we know is being stoutly opposed and perhaps encouraged in certain quarters.

In the words of the Right Honourable Winston Churchill "Is it possible for any Government with a scrap of respect for honest dealing between man and man to embark upon a policy of deliberately squeezing out the native of India from regions in which he is established under every security of public faith." Equally high authorities in their evidence given before the Inter-departmental Committee have said that, if the British enjoy the position that they do to-day in Kenya Colony, they owe it to the Indian merchants, to the influence that these Indian merchants wielded in that Colony and which influence they exercised in favour of the British.

Indians are not guided purely by sentiment in what they demand. They ask for what is their legitimate due and any attempt to deprive them of their rights give weight to the belief that all the talk about equality throughout the Empire is but a myth. It is evident that it is colour, definite and different pigmentation, that is the bar. It is admitted that no nation on the face of the earth can colonise as well as the Britisher, but it is equally true that the British do not possess the power of assimilation as do other nations. Take for example France. France claims nothing less than to be able to assimilate her coloured people, to make them into French people. She will not call a Senagalese soldier a Senagalese but a *Français de couleur*.

According to recent reports terms have been offered as a basis of settlement to the Indians according to which there is to be a common franchise for both Indians and Europeans. I believe the Colonial Secretary desires to have 11 constituencies returning 7 Europeans and 4 Indians. If I understand rightly, the Government of India hold out for 12 constituencies with 8 European and 4 Indian representatives. The Honourable Mover said clearly this morning that we do not desire to have a majority in the Executive Government, and in the new terms that have been suggested the representation on the Executive Council will continue as at present and the official majority retained. The new terms suggest that there is to be no segregation either in commercial or residential quarters, but the people will have to comply with both sanitary and building laws.

The chief point is with regard to immigration, and I agree with the Honourable Mr. Lalubhai Samaldas as also with the Honourable the

Mover that on no account should the Government of India give in as regards immigration. I understand the Colonial Secretary says he will withdraw restriction on immigration but with the right to put a check should at any time there be an undue influx of Asiatics into the Colony. Then there remains the last question of the Highlands. They desire to keep them exclusively for Europeans. I am not quite sure what attitude the Government of India hold on this point but according to telegrams received within the last few days, they on their part also rightly insist that if they so choose to do, they will have the right to reopen the question of the Highlands at a later date.

One would have thought that these terms which are far more favourable to the European settlers would have satisfied them. We have heard a good deal within the past few weeks in this House and at another place in regard to a particular Bill which became law only a week ago of the process of "levelling up" and "levelling down." Even if "levelling up" and not perfect equality is acceptable to Indians in Kenya, the European settlers on their side are determined to have no "levelling down" whatsoever.

My Honourable friend Mr. Chettiyar just referred to the telegram saying that the Governor of the Kenya Colony Sir Robert Coryndon is proceeding to Europe for the purpose of discussing this matter and is taking with him representatives of the European community. It is a pity there was no mention in the same telegram of any desire on his part to be accompanied by any Indian representatives. But as the House is aware, there are telegrams from the Indians there suggesting that the Central Legislature should send, not a mission as my Honourable friend proposes, to Kenya, but that representatives from the Central Legislature might proceed to London while the Governor is there and discuss the matter with him and the other authorities.

I was one of those who was also under the impression that the Resolution passed by the Imperial Conference in 1921 regarding equality of status related not only to the self-governing Dominions but also to the Crown Colonies. The Right Honourable the Mover has to-day corrected that impression which prevails with most of us. But, Sir, that is the impression not only in this country but also in Kenya Colony itself, for the European settlers there have said that if the Imperial Conference by the Resolution which they passed in 1921 agreed to an equality of status being given to Indians, they did so because of the services rendered by Indian soldiers during the War, and that if Indian soldiers came over to their Colony they would have no objection to having them but that the Indians there belonged to the trading classes. They imply that if Indian soldiers went to settle in Kenya they would welcome them with open arms. To say the least this is asking us to believe the impossible. It is nothing else but cant and hypocrisy.

These European settlers also urge that the present attitude of the Indians is not so much of their seeking as due to what they think was the mischievous suggestion made in the English press at the conclusion of hostilities by men of the type of Sir Theodore Morison that the Colonies the English took over from Germany in East Africa might be handed over to Indians for the purpose of colonisation. Sir, the well informed correspondent of the *London Times* telegraphing from Nairobi on

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February 1st in regard to this particular matter to his paper in London wired as follows:—

“The Indians authorise me to state that they have no desire now or in the future to seek to control the administration and are willing to give any pledge or to agree to any safeguards which will meet the fears of the Europeans on this score. They only ask for adequate representation of their peculiar interests on the same electoral system as Europeans.”

To deny this to Indians and to deny them the other rights which they claim as subjects of the great British Empire will be the grossest piece of injustice that we can think of and will by no means tend to further the consolidation of that great Empire which ought to be our great aim.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN (West Punjab : Muhammadan): Sir, there are no two Indians who can differ on this question. This vexed question has come up many times before the House and the only course that an Indian can take I have always taken and supported this cause. Sir, we all of us waste time in this House by empty talk. We do all the talking we can but talking is nothing. My Right Honourable friend there has done his very best in arguing the righteousness of our cause. That is exactly what happened when the bunnia's cow was being eaten by a lion. He brought out his books and said “On what account have you got any right to eat my cow.” At this the lion simply roared at him. The bunnia said, “if this is the justification, I submit and withdraw my claim.” We have got the same thing in the Hindustani proverb—

“Jishki Lathi, Usiki bhais.”

That is to say, if there is any dispute about the ownership of a buffalo, the man who has a big club in his hand the buffalo is his. However, by speaking we do one useful thing, and that is all the anger and sorrow we feel in our minds we can empty it out of our hearts in this House. That is one useful purpose it serves.

Then, Sir, it is known by all that when our Government went to war with South Africa, the main reason why they went to it was that the South African people did not behave well, and did not treat properly the English subjects of His Majesty the King Emperor. Now what is happening here in Kenya Colony is exactly the same thing, only in the other case the people concerned were the Dutch. It is known to all that the first regiment which landed in East Africa . . . .

The HONOURABLE THE CHAIRMAN: Will the Honourable Member kindly confine himself to the terms of the Resolution?

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, the only thing I want to say is that we must have claims to put before the Government, and if we do not put our claims we cannot expect anything. So I was trying to put before the House that we took the lion's share in conquering a big portion of Africa. The climate was considered to be very bad and the Europeans could not stand it without injury to their health. In the same way the Indians went there and cleared the jungles,

because it was then considered that this colony was only capable  
 3 P.M. of being worked by those who could stand the climate. But directly this was done we were not wanted any more. In working there

many of our brethren got killed and became ill and died owing to the bad climate; and when we thought that we were going to get the price for those services, what do we find? Quite the reverse. We are told "No, your work is now over; off you go." Of course, we are all very proud and very thankful to the Government for their having done their best to help us. Now, if one side says "We want this portion of the country for Indians," and the other says "No, you cannot have it," what is going to happen? When diplomats get a question of that kind and find that they cannot go any farther, then they have got a remedy; they can even do something more by declaring war; but here we are under the Government and we cannot do anything more of the sort; all that we can do is to come here in this House and do the talking which we are doing to-day. The Government claims that they protect Indians. But we are unprotected, *i.e.*, in Kenya Colony; the Government should therefore either say very clearly "We cannot do anything in the case," or say "We can do it," and do it. Of course, Sir, we are so sore on the point that if we could have done anything according to the proverb which says "God helps those who help themselves," we would have done it; but we cannot do it because we are under the Government which ought to help us. If there are 25,000 men of one nationality and eight of the other and they are equally organised I do not think there can be anybody who can get us out, because it has been seen and tried in the last war that a bullet sees no white, black, red or yellow colour and equally pierces through them all. One can speak a lot on this subject, but I think it does not help as much. We only hope that our Government, which is responsible to God for us, will come to our rescue and if the Government does not do so our God will.

The HONOURABLE MR. B. N. SARMA (Revenue and Agriculture Member): Sir, the Government fully appreciates the strength of the feeling on this subject both in the Council as well as outside and acknowledges the moderation with which Honourable Members have discussed it. The Resolution divides itself into three parts; the first asks for a recognition of equal rights and full rights of citizenship. The Government of India's attitude is well-known on this point. His Excellency Lord Chelmsford in clear and emphatic terms defined the position of the Government of India in these words:

"The position of the Government of India is and always will be that there is no justification in a Crown Colony or protectorate for assigning to British Indians a status in any way inferior to that of any other class of His Majesty's subjects."

The despatch which the Government of India sent Home in 1920 proceeds upon the clear enunciation of this principle and on the basis of its acceptance. Further, when the position of Indians had to be defined in respect of those who were domiciled in the Dominions, the Government in a memorandum which was presented to the Conference and the text of which has been substantially reproduced in a Resolution published on the 5th October, 1921, have again emphatically drawn the attention of the Imperial authorities to the essential importance of the recognition of this principle in these words:

"It is the desire of India to remain a partner in the British commonwealth of nations, but her own self-respect demands that the partnership should be equal. She cannot be expected to acquiesce in a position of permanent inferiority. The essential conditions of equal partnership are the demand of British Indians to full rights of citizenship in whatever part of the Empire they are domiciled. It is believed that the only final solution of the controversy which has so long embittered the relations between India and the other parts of the Empire will be found on these lines."

[Mr. B. N. Sarma.]

We have been trying to negotiate with the Colonial Office on these lines and it is not for me, when those negotiations have not been finally concluded and proclaimed, to enter into any details of what conclusions have been provisionally reached. Honourable Members have alluded to certain conclusions which the India Office and the Colonial have come to, but I shall not be drawn into any discussion on the subject because I at any rate would like that the confidential character of any communications that may take place as between the several departments of the Government should remain inviolate. The Right Honourable Mr. Srinivasa Sastri has alluded to the necessity for drawing a distinction between the position of the Crown Colonies and Protectorates and the Dominions in respect of the Resolution which had been passed at the Conference in the year 1921. I may state that so far as I am concerned, and the Government of India which has had to deal with this question in my department, we have always proceeded upon the footing that it is the spirit of those Resolutions that counts, but that those Resolutions were really confined to the relative position of India and the dominions. The instructions which we gave to our delegates were to treat in respect of our position in the dominions. The speech of the Right Honourable Mr. Srinivasa Sastri as far as it was reported to us conveyed only that meaning although there were indications here and there in the speeches of some of the statesmen that a wider aspect was impliedly sought to be given to the discussions then proceeding. Therefore, in my remarks on this subject I shall take it that the Right Honourable Mr. Sastri proceeded upon the footing that negotiations have been proceeding altogether on the assumption that the relations between the several parts of the empire, so far as India and the Crown Colonies and Protectorates are concerned, are to be governed by the same principles as have governed their respective relations before and after that Conference. Now, Sir, the Right Honourable Mover dwelt upon some of the details as to whether a concession has been given here and a concession taken there in favour of India in the course of these negotiations. It would be unnecessary to dwell upon the details of these negotiations or the provisional conclusions that have been arrived at because the first part of the Resolution deals only with the general principle of asserting the full rights of citizenship and equality of status.

I shall now proceed to the second part of the Resolution, and my position now is exactly the same as it was when I spoke in the Legislative Assembly. I never meant to suggest to the Assembly, and I do not mean to suggest to this House, that we can treat the position of affairs existing now in any very light-hearted manner. I should not be doing my duty if I do suggest that there is nothing to cause us serious reflection and anxiety, serious food for thought. I would not say that the position is grave. That may be wrong and would perhaps be exaggerating the situation. But when I spoke there, and I do speak here, I refuse to believe that any body of Britishers could really mean to assault or in any way injure an unarmed body of Indians, defenceless body of Indians in Kenya, whatever might have been the provocation that was imagined as offered when constitutional questions of such essential import were being discussed there. I do not disguise—I never disguised from myself—the fact that there were expressions used, there were Resolutions passed, which impliedly and even expressly conveyed a threat, and showed that the British settlers were acting as if labouring under very strong provocation and might resort to defiance of authority. I shall deal with

that later on. There was language used which caused perhaps justifiable apprehension in the minds of the Indians there, but I do not think that we should be acting rightly if we do not attach too much meaning to them and assume that those statements or many of them were made really in a spirit of bluff. It may be that the statements were made by persons who did not know really the implications of the language they were using. The graver part really of that controversy is that there was exhibited a spirit of defiance of authority, but I do not think it would be right or justifiable for this Government to express any opinion whatsoever upon the conduct of the subjects of another Government, however much that Government may be that of a component part of the British Empire. The Central Government will always assert its authority, will refuse to be cowed down by any section which defies the lawful orders, the legal orders, that may be passed by the Government, and I shall leave it at that.

We now come to the third part of the Resolution, which was not discussed in the Assembly. This question has assumed some importance only latterly. Nobody heard of it very seriously until very recently . . . (*The Honourable Mr. Lalubhai Samaldas*: "It was in 1921") . . . until very recently. The attitude of the Colonial authorities on this question itself has been hitherto completely above reproach. To whatever school of thought, to whatever section of politics, the Officer in charge of the Colonial Department might have belonged, it has always been taken for granted that there was to be no discrimination, no restriction, of an undesirable character to be imposed upon Indians. (*The Honourable Mr. Lalubhai Samaldas*: "What about Mr. Winston Churchill's after dinner speech"? ) I will quote from Lord Milner whose attitude was not considered to be very favourable to the Indian community. This is what he says in paragraph 5 of his Despatch, dated the 21st of May, 1920:

"I could not countenance any restrictions which would place natives of India at a disadvantage as compared with other immigrants and subject to the Protectorate Immigration Ordinances which are of general application, there must be no bar to the immigration of Indians."

Lord Islington raised a debate on the question of the status of Indians in East Africa and the position has been further explained by Lord Milner in a speech which he delivered in the House of Lords. This is what he has stated there:

"Needless to say it is the earnest desire and determination of His Majesty's Government, disregarding these onslaughts on the one hand and on the other not letting themselves to be deterred from pursuing a policy which they regard as equitable and as fair alike to the White settlers and to the Indians to see that there is room for both races in the development of East Africa. There is room for both of them I may say without interfering with the welfare or advancement of the natives. The great thing is to bear the cardinal fact always in mind that there is no reason why a proper development of any of the races interested in that country should interfere with that of another."

I do not think that more emphatic language could have been employed. There was no intention, no desire, on the part of the Colonial Office to impose any restrictions which might be calculated to effectually prevent the outflow of any population from India subject to the usual safeguards which every Colony and every Government must impose when it admits people from another part within its jurisdiction. (*The Honourable Mr. Lalubhai Samaldas*: 'At that time only.') Yes. The attitude of the Government of India has clearly followed the lines which have been accepted by the Colonial Office in the statements by Lord Milner which I have just now quoted to the House. The existing Ordinance of 1906

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provides for certain restrictions by way of deposit of a certain amount of fee to guard against paupers and undesirable persons from landing in the Colony. No body can reasonably take any exceptions to such restrictions. Well, therefore, if any restrictions are sought to be imposed, they would have to be discussed and the negotiations must naturally accept the essential principle. I am not suggesting for a moment that no modification of these Ordinances would be possible or desirable under any circumstances whatsoever. Reasonable restrictions such as would not discriminate against the Indians as against others, reasonable restrictions which would safeguard and protect the interests of the Colony, reasonable restrictions which may be imposed in the interests of the Empire, we shall always have to submit to. But the House may rest assured that the Government of India cannot and would not be a party to the acceptance of any principle in respect of the Crown Colonies or Protectorates which would be unreasonable in the minds of all right-thinking men or effectually bar the door to the entry of Indians.

There is one point with reference to this question to which special allusion has been made by the Honourable Mr. Samaldas. He has said, "Oh, this may have been the attitude of the Colonial Office in the early stages, but later on we have reason to believe that that attitude has been changed for the worse so far as India is concerned." We have no reason to believe that the essential principle hitherto acted upon would ultimately be departed from, except after full discussion with the Government of India and the India Office, and with their consent and it is perhaps too soon to cry before there are any concrete proposals before the Government suggesting what those modifications are to be. But the principle upon which the Government of India has guided its policy hitherto and hope to guide their policy hereafter, I think I have already indicated to the House. There seems to be really no reason why there should be any anxiety on the part of the white settlers or anybody with regard to there being no room in East Africa for all races. You find here a country of 246,800 square miles, a size larger than that of Madras and Bengal put together, which have a population of roughly 90 millions, the population here being only 2,719,000, with large rivers, a fine climate in many places, with possibly minerals, immense possibilities for the improvement of cotton and the growing of other agricultural crops. There seems to be no reason whatsoever why there should not be sufficient room for both the Indians and the Britishers in that Colony. I am sure when the position is really analysed those who are at present anxious about the future of that Colony from the British point of view will realise that they are running too much after the shadow and abandoning the substance, and that it is desirable to develop the Empire in peace and harmony and with the mutual co-operation of all the component parts of the Empire. There is no doubt a fear in the minds of the British settlers that, given equality of status and a common franchise, with a large influx of Indians into the Colony, a day may arrive when the balance of power would pass from the hands of the Britishers settled there into the hands of the Indians. I will read a few words from a speech by Lord Milner, which will clearly indicate that that day must be very far distant, and with the assurances which have been given by the Indian community themselves that they have no desire to usurp the function of Government in that country, there ought not to be any reason for anxiety or apprehension in the minds of any reasonable man. Speaking of the

possibility of a change in the form of Government, this is what His Excellency said:

The RIGHT HONOURABLE V. S. SRINIVASA SASTRI: The date of that speech?

The HONOURABLE MR. B. N. SARMA: I think 1919 or 1920.

"I may say at once having regard to the embryonic condition of the country and its very early stage of development, I think that position will have to be maintained for a considerable time, the position, that is to say, of an official majority in the Legislative Council leaving to the authorities at Home the responsibility for the main measures of legislation adopted."

It is true that there is a keen desire on the part of some of those settled there to introduce at a very early date a responsible form of Government, and the fear that is entertained is that this equality of status may stand in the way of that happy era dawning in the immediate future. But I think it is too soon to speculate on the lines which have been followed by some statesmen occasionally, those who wish to peep into the dim future rather rashly and unnecessarily prematurely. There is no real danger, and I hope that the British settlers themselves will realise that the harmonious development of the Colony would be fostered by the growth of a friendly spirit with India. Now, Sir, one further remark has been made, and that is that the Colonial Office have asked for the Governor of Kenya to go to London with some European settlers to discuss the position. We have no information that the Colonial Office has invited the settlers, but the Government of India fully appreciate the strength of feeling in the country, both here as well as in Kenya, that if the British settlers were to go there to represent their case, the Indians in Kenya should have an equal chance, and we propose to press upon the attention of the Secretary of State that an equal opportunity should be afforded to the Indian community in Kenya to state their case before the Colonial Secretary in the same manner as their British brethren hope to do when they proceed on the mission on which they have embarked. I have already said that the problem is full of difficulties, that it is in some respects assuming a serious aspect, and I am glad that this House has, in the terms in which they have discussed the Resolution, shown that they would not excite themselves or the country unnecessarily in a way to embarrass the Government of India or the Home Government and preclude them from pursuing steadily and patiently the course of action which they had set before themselves. I have already indicated the attitude of the Government of India on the various points detailed in the Resolution. It is not unnatural, there is nothing unexpected in the British settlers getting alarmed at a settlement which they think may place them in a minority in the distant future . . .

The HONOURABLE MR. LALUBHAI SAMALDAS: There is no reason for them to do so.

The HONOURABLE MR. B. N. SARMA: I think in a discussion of this character we must give all parties credit for a little clear thinking, and analyse why these fierce passions have been excited over this controversy. I think therefore if one looks into the merits of the case one can readily understand why some of them at any rate fear that the balance of power may pass into the hands of the Indians, and consider that is an undesirable feature which they should safeguard against. Sir, it is a matter for congratulation that the discussions are going to be carried on in London in an atmosphere as free from passion and prejudice as may be expected,

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human nature being what it is and political conditions being what they are. There is no doubt that the British public, the British press and British statesmen would be roused to a sense of the reality of the issues confronting the Empire and would exercise a moderating influence upon the wild passions which have been excited in this controversy. It would be unreasonable for us to attribute to the Colonial Office any desire to depart from the strict policy which they ought to follow, namely, one of fairness to all races living within their jurisdiction, a policy which is likely to preserve, continue and consolidate the Empire which we all hope would be a living Empire full of freedom for all and freedom-loving institutions for all time to come. I hope that the public press would really see the view point of the Indians and of the Britishers alike, take into consideration the wide political issues which are involved and not narrowly assume that one side or the other is correct in its assumptions, in its facts and in the correctness of its future policy. I have no doubt that in the new surroundings in which this problem is going to be discussed a reasonable compromise would be effected which would be satisfactory to all. More than one Member here as well as in the lower House has alluded to the fact that the Indian community has helped considerably in the building up of this Colony, has been instrumental in promoting its prosperity and can justly claim credit for the present improved state thereof. No one demurs to that, although we should not belittle what has been done by the use of British capital, British industry and British initiative. No one, I think, would lightly set aside the great help which India has rendered in the hour of peril of securing East Africa for the British Empire on a permanent footing. I am sure that all these considerations would weigh with the statesmen who have in their hands the future of the Empire. Nor would I think it would be forgotten that in the discussion of the Racial Distinctions Bill a desire has been manifested throughout India, both on the part of the British community as well as of the Indian community that there should be harmony and peace throughout the Empire. Give and take must be our principle. Let us not, therefore, ask for a strict following of what logically may be the result of the assertion of certain principles of action. Both the Britisher and the Indian would have to give and take and if I have refrained from discussing the details of the negotiations which have been going on, it is on the ground of principle as well as on the ground that it would be undesirable to say where we have given a little and where we propose to take a little.

Sir, I have little more to add. The Government of India do not oppose this Resolution. They leave it to the House to decide and would communicate the wishes of this House to the Secretary of State. The official Members would naturally abstain from voting if they wish to do so having regard to the attitude of the Government that they do not oppose this Resolution.

The RIGHT HONOURABLE V. S. SRINIVASA SASTRI: Sir, I am duly impressed by the weighty and magnanimous remarks bearing both on policy and expediency which have fallen from the Government spokesman to-day and I could wish from the bottom of my heart and I have no doubt my unofficial colleagues would do the same, we could wish from the bottom of our hearts that they were heeded duly by the authorities in England. I was in particular impressed by the statements made on the

subject of immigration and immigration restrictions by the Honourable the Member for Emigration. The history of this matter, Sir, is a little worthy of regard in this connection. About the beginning of September 1922 the question of imposing new restrictions came up for consideration and the colonial authorities, of course backed by the Governor, actually suggested that a combined property and education test should be instituted with the object of keeping out what they described as the undesirable immigrant from India. The India Office, of course, protested; the result was that the Secretary of State for the Colonies sent out a despatch to the Governor of Kenya saying that, while he held himself free in the case of actual danger from the influx of the Indian element into Kenya to propose additional restrictions, for the time being he was not convinced that there was any necessity for additional legislation, because the figures quoted for influx and efflux of Indians did not justify any apprehensions of that danger. That being so, we drew our breath easily for a time, but, unfortunately, recent information, which we cannot doubt, has come to us in a cablegram, dated the 13th February, from the General Secretary to the Indian National Congress of East Africa, a gentleman of the name of Shamsuddin, who has kept the Viceroy and the Government of India duly informed of the progress of events there, that in February of this year, the Governor of Kenya actually told the representatives of the Indian population " Well, we decided that there should be no restrictions some time ago, but I am addressing the Colonial Office again. I have reconsidered the position and I think we shall impose some restrictions on immigration ", and he suggested a combined education and property test. Now, Mr. Shamsuddin is apparently a Member of the local Legislative Council in Nairobi and he can be expected to understand what he is talking about. This is what he says about the effect which these proposed restrictions might have. He says emphatically " This will no doubt mean the danger of Africa being shut on British Indian subjects. " This is what makes some of us on this side of the House a little uneasy; and that, Sir, is the secret really of my introducing the third clause into this Resolution. It is a matter requiring instant attention. I have not asked in so many words that it should be sent by telegraphic message to His Majesty's Government and no point need be made out of that. As a matter of fact, even supposing in the first of these clauses the words " telegraphic message " did not occur, I know from the profound interest that the Government of India are taking in this subject and from the importance of this Resolution, that they would be cabling all these things, whether we requested them specially to do so or not. But if a special clause is necessary, I put it in now.

**THE HONOURABLE THE CHAIRMAN:** The question is that the following Resolution be adopted:

" That this Council recommends to the Governor General in Council that he be pleased to convey by telegraphic message to His Majesty's Government the view of this Council that no settlement regarding the political rights and status of Indian settlers in the Crown Colony of Kenya would satisfy the people of India unless Indians in Kenya are granted full and equal rights of citizenship with European settlers.

And this Council records its indignant protest at the reported threats of violence on the part of the latter and fully trusts that His Majesty's Government will take effective steps to prevent any such outbreak and to afford the Indians resident in Kenya the necessary protection.

And this Council records its emphatic conviction that no restrictions on new immigration from India will be acceptable to public opinion here."

The motion was adopted.

## THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

The HONOURABLE MR. PHIROZE SETHNA (Bombay: Non-Muhammadan): Sir, I move:

"That the Bill further to amend the Married Women's Property Act, 1874, as passed by the Legislative Assembly, be taken into consideration."

The Married Women's Property Act of 1874 in this country was based on a similar Act enacted in 1870 in the United Kingdom. The object of Section 6 of the Indian Act is evidently to enable a man if he wishes to make provision for the benefit of persons for whom he has natural love and affection and for whose maintenance he is in duty bound to make some arrangements to take out a policy on his life for the benefit of his wife or wife and children and thereby create a trust of the policy moneys and that such policy moneys "shall not be subject to the control of the husband or to his creditors or form part of his estate". The object therefore is one which must appeal to all who would not like to see widows and children left destitute and unprovided for.

I think the Council will follow me better if with their permission I now read Section 6 of the Act which is proposed to be amended by the Bill. It is as follows:

"A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act No. XVII of 1864 (to constitute an office of Official Trustee) section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors."

It would appear, however, that the application of this section in the opinion of some is restricted by the second paragraph of Section 2 of the same Act which is as follows:

"But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jain religion, or whose husband at the time of such marriage professed any of those religions."

Because of this second paragraph of Section 2 a conflict of judicial opinion has arisen and which appeared for the first time in 1918. The Bombay High Court in an appeal case presided over by the then Chief Justice Sir Basil Scott decided that the Married Women's Property Act did not apply to Hindus. This case is *Shankar versus Umabai*, 1914, I. L. R., 37 Bombay 471. The Court held that the creditor of the assured could claim the policy and not the widow for whose benefit the policy was taken out inasmuch as the assured was a member of a joint Hindu family. A few months later a similar case was contested in the Madras High Court. It was referred first to an appeal Court and subsequently to a full Court consisting of three Judges. The case is *Balamba versus Krishnaya*, I. L. R.

37 Madras 488. The full Court gave their decision in 1914 which was directly opposed to the judgment given by the Bombay High Court a few months previous. The Madras full Court held that the Married Women's Property Act does apply to Hindu widows. The Calcutta High Court on the other hand holds the same opinion as the Bombay High Court. The point has not yet come up before a court of law in the other provinces but it is quite likely that they too may not all hold identically the same opinion. The Council will therefore understand the necessity of this Bill which is now brought forward so that the Legislature might decide one way or the other in order that throughout the country the law Courts might interpret the Act uniformly and relieve the general public as also the Insurance Companies from the very uncertain position in which they now find themselves.

The question therefore arises whether the benefit of the Married Women's Property Act should be given or be denied to others than Christians and Parsis in this country. When this Bill was first introduced in another place the Honourable Mover, Mr. Kamat, proposed to amend section 6 by the addition of a clause to say :

"Notwithstanding anything contained in Section 2 this Section shall apply and shall be deemed to have always applied to Hindus, Muhammadans, Buddhists, Sikhs and Jains."

As the Bill has emerged from the Legislative Assembly this Council will see that Buddhists have been left out. This was so done by the Select Committee on the suggestion of the Government of Burma where there are the largest number of Buddhists in this country and at the last reading a similar desire was expressed in the other place by a prominent representative from the province of Burma. Another change that this House will notice is that the amendment is to apply to the Madras Presidency after 31st December 1913 and in the rest of British India after 1st April 1923. There is good reason for this. The amendment seeks to reconcile the action of the Madras High Court, since the date of the decision of that Court I have already referred to.

We may now proceed to consider the advisability or otherwise of extending the benefit of the section to communities other than Christians and Parsis as asked for in the Bill. We might first consider the objections that have been or might be advanced and thereafter the advantages. The principal objection is that if a policy hereafter or existing policies are considered to be taken out under the Married Women's Property Act then although the husband is paying the premiums himself, he will not be able to have any control over the policy and much less will he be able to borrow on the security of the policy either from the Company itself or from any one else and not be able to so borrow even if the wife agrees to join in the request for a loan. Now I ask why should this be considered a hardship in the case of Hindus, Muhammadans, Sikhs or Jains when it is not considered a hardship in the case of Christians and Parsis and similarly not a hardship when policies in the United Kingdom are taken out by any one under the Married Women's Property Act? The main object of the Act is to enable the husband to set apart from his income enough to pay premiums for a life policy the proceeds of which at maturity would exclusively benefit the wife and the children and no one else. The husband is under a moral obligation to make suitable provision for his wife. The Married Women's Property Act as it stands, or the amendment proposed in this Bill does not by any means compel any person to name the wife in

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[Mr. Phiroze Sethna.]

the policy and thereby bring it under this Act. It is perfectly open to him to do so or not but once he exercises the privilege given to him under this Act the policy moneys cannot be dealt with in any other way but must go at maturity to the wife or wife and children as the case may be and to no one else.

A further answer to the same objection is, that if a person chooses to take out a policy for the benefit of his wife and yet desires with  
4 P.M. the concurrence of his wife to have the right to borrow moneys on the same he need not insure under the Married Women's Property Act. He might take out a policy in his own name and then assign it to the wife in which case likewise the moneys in due course will be paid by the Insurance Company to the assignee, *viz.*, the wife, but should at any time during the currency of the policy the husband desires to have a loan on the policy he could do so by getting his wife to be a party to the loan agreement. Therefore there is no hardship of the kind that has been urged in some quarters. As to existing policies, by making this Bill operative in British India (except in Madras) only after 1st April 1928 Hindus, Muhammadans, Sikhs and Jains who have taken out policies before that date in the names of their wives may be able to borrow on such policies but after this Bill becomes an Act which we hope will be before 1st April 1928 they must be given equal privileges under the Act with Christians and Parsis.

The second objection is that a Hindu policy holder being a member of a joint Hindu family might insure very heavily for the benefit of his wife and children and pay premiums of amounts which are far in excess of his own share in the joint family income. In such cases the surviving co-parceners may claim the policy moneys. If the policy holder does pay premiums with the moneys he has no right to, then paragraph 4 of section 6 is clearly against him which says:

" Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors."

But I ask the Council would there be any appreciable number of cases of this kind. The best proof that there will hardly be any such cases is in the fact that they have not come within the experience of Insurance Companies so far.

Some Insurance Companies hold that the application of Section 6 to Hindus, Muhammadans, Sikhs and Jains would be attended with considerable difficulties in practice because there is no general legislation amongst Hindus as to marriages and the validity and the effects of marriage are determined by the customs and usages of the particular caste, sect, tribe to which the party belongs. Also that there is an absence of Indian legislation as to Muhammadan marriages and there are many sects of Muhammadans and the prohibited degrees, etc., may vary with the sect. The marriages of Sikhs and Jains too are governed by their customs. Therefore they urge that they are faced with the task of ascertaining that the claimant was validly married and also that there was no other widow or if there were another widow then the claimant was entitled in priority. It is urged in consequence that such a task would be beyond the capacity of the Company and it would be compelled to relegate the claim to a Court of law for its own protection and such references to Courts would reduce the popularity of Life Insurance policies. Such a view to my mind is incorrect. If an assured were to say " pay the money to my wife A on the policy maturing "

and if the Company paid it to A on the assured's death and if afterwards it turned out that A was not the legal wife of the assured the Company would still be safe because the legal representatives of A who in such a case would be entitled to the money, would be estopped by law according to Section 115 of the Evidence Act from denying that A was the assured's wife. Consequently if the wife is named in the policy as is invariably done no difficulty will arise. In practice every Insurance Company in such policies does require the name to be inserted before issuing the policy. Moreover, Section 6 provides for policies to be taken out only by a "married man" and not by "any man" as the amended English Act of 1882 does, so that under the Indian Act a bachelor cannot insure his life for the benefit of his future wife and no difficulty in practice could possibly arise from the extension of the Section to Hindus, Muhammadans, Sikhs and Jains.

The only case where a difficulty may arise would be when a policy is for the benefit of a wife who has been named and children who are not named, *e.g.*, for all such children as may be in existence when the money became due. In such a case the Company would require proof as to the identity and legitimacy of the children but this difficulty is not confined to Hindus, Muhammadans, Sikhs and Jains alone. It would also arise in the case of Christians and Parsis to whom Section 6 already applies. This I hope conclusively establishes that the extension of Section 6 to Hindus, Muhammadans, Sikhs and Jains will by no means entail any greater difficulty on Insurance Companies.

Now a word in regard to the advantages of extending the section to the communities named in the Bill. They are so self-evident. First and foremost, if the wife is named in the policy there is hardly any loss of time after the assured's death and the policy moneys are paid without any delay and what is more without any expense in obtaining legal representation. Again, it would obviate the responsibility of Insurance Companies having to ascertain the validity and legality of the legal representation to be obtained by the claimants. Most of all it would prove to many a Hindu, Muhammadan, Sikh and Jain a source of infinite relief and solace to know for certain that his wife and children alone and no one else will get the policy moneys which is such a doubtful proposition at the present moment owing to contrary views held by different High Courts in the country.

The Bill therefore though small is pregnant with deep meaning and will render a great service to Indian womanhood. It must be the paramount duty of the Legislature to help them as best possible and the Legislature will thereby advance the cause of Life Insurance in the country which needs all the support it can get for it will be the means of instilling habits of thrift among the people and enable them to discharge the sacred duty of leaving one's dependants provided for after the bread winner is himself dead and gone.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I welcome this amending Bill. The case for the Bill coming before this House has been so well explained by the Honourable Mover that I need not go and waste the time of the Council any more. As the Bill does not affect any religious law I give it my hearty support and wish that the Council will pass it unanimously.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN (West Punjab: Muhammadan): Sir, I strongly support this Bill and wish that it is passed

[Colonel Sir Umar Hayat Khan.]

at once; the cause is this, that before this there was a class of money-lenders who used to accumulate money and then become insolvent and everybody lost money invested with them. Now, we are glad that poor zemindars who are plunged in debt will have some way of getting out of it by giving their property to their sons and their wives. Of course I need not say anything about the other side of the shield before this House as to how it might be helpful to the other people, as I represent the zemindars. All that I want is how the zemindars can easily evade their creditors and leave all their property in the hands of their sons and their wives and this can be effected by this measure. It has been seen that one of the officials who used to take bribes and knew he was going to be run in, quietly, before being prosecuted, transferred all his property by deed to his son and he got out of the trouble. This will be a very useful Bill in this respect for the zemindars.

The HONOURABLE THE CHAIRMAN: The question is:

"That the Bill further to amend the Married Women's Property Act, 1874, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

The HONOURABLE MR. PHIROZE SETHNA: Sir, I now beg to move:

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

I should like to say only one word. This Bill, as the Council knows, was the first private Bill after the Reforms came into existence to be introduced in the other place about a year ago. Since then another private Bill was also introduced there and passed and came to this House, but unfortunately this House rejected it. If, therefore, the Council of State will now be pleased, as I hope it will, to pass this Bill, it will be the first private Bill after the Reforms to be passed by the Central Legislature.

The HONOURABLE THE CHAIRMAN: As it is a small Bill and a non-contentious one, I do not propose to put it clause by clause. I shall place it before the Council as a whole. The question is:

"That the Bill further to amend the Married Women's Property Act, 1874, as passed by the Legislative Assembly, be passed."

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Tuesday, the 6th March, 1928.