

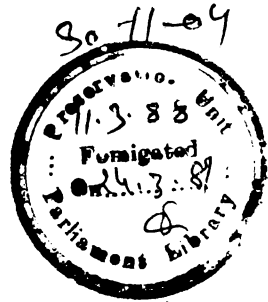
Tuesday, 5th April, 1932

**THE  
COUNCIL OF STATE DEBATES**

**VOLUME I, 1932**

*(25th February to 6th April, 1932)*

**THIRD SESSION  
OF THE  
THIRD COUNCIL OF STATE, 1932**



**CALCUTTA : GOVERNMENT OF INDIA  
CENTRAL PUBLICATION BRANCH  
1932**

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# COUNCIL OF STATE.

*Tuesday, 5th April, 1932.*

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

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## MEMBER SWORN :

The Honourable Mr. George Richard Frederick Tottenham, C.I.E.  
(Army Secretary).

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## SHORT NOTICE QUESTIONS AND ANSWERS.

### EXEMPTION FROM INCOME-TAX OF LIFE INSURANCE PREMIA.

1. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE : Will Government be pleased to state whether life insurance premia are exempt from income-tax or not ?

THE HONOURABLE MR. A. F. L. BRAYNE : Yes. Under section 15, sub-sections (1) and (2) of the Indian Income-tax Act, subject to the limitation imposed by sub-section (3) of the same section, namely, that the aggregate of the sums so exempted and of sums exempted as deducted under the authority of Government from a Government servant's salary as subscriptions to a provident fund [section 7 (1)] and of sums exempted as contributions to a recognised private provident fund (section 58F), shall not exceed 1/6th of his total income.

### EXEMPTION OF LIFE INSURANCE PREMIA FROM INCOME-TAX.

2. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE : Were life insurance premia ever exempt from income-tax ? If so, since when are life insurance premia being treated as subject to income-tax ?

THE HONOURABLE MR. A. F. L. BRAYNE : Life insurance premia are now exempted as I have just stated. They were also exempted under the Acts of 1886 [section 5(f)] and 1918 [section 12 (2)].

### LIFE INSURANCE PREMIA AND INCOME-TAX.

3. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE : If through a mistake the item of life insurance premia be not included in an assessee's statement of expenses submitted to the Income-tax Officer, can that mistake be rectified by petition to the authorities concerned ? Is the assessee entitled to get exemption from income-tax for the life insurance premia he pays ?

**THE HONOURABLE MR. A. F. L. BRAYNE :** If there is a mistake in a return, a revised return may be submitted at any time before the assessment is made [section 22 (3)]. While it is doubtful whether an assessee could file an appeal before the Assistant Commissioner under section 30 against an assessment based directly on his own return, he could certainly move the Commissioner of Income-tax to exercise his power of revision under section 33. It would then be open to the Commissioner to pass such orders as he thought fit.

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### BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

**SECRETARY OF THE COUNCIL :** Sir, in pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the following Bills which were passed by the Legislative Assembly at its meeting held on the 4th April, 1932, namely :

A Bill to provide for the administration and discipline of the Indian Air Force, and

A Bill to provide funds to enable Government to continue wireless broadcasting in India by increasing the import duties leviable on wireless reception apparatus.

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### MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

**SECRETARY OF THE COUNCIL :** Sir, the following message has been received from the Secretary of the Legislative Assembly :

“ I am directed to inform you that the Legislative Assembly has, at its meeting held on the 4th April, 1932, agreed without any amendment to the Bill to validate certain suits relating to public matters which was passed by the Council of State at its meeting held on the 14th March, 1932.”

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### STATEMENT *RE* WORKING OF THE CAPE TOWN AGREEMENT OF 1927.

**THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN** (Education, Health and Lands Member) : With your permission, Sir, I beg to make the following statement :

1. In accordance with paragraph 7 of the Cape Town Agreement of 1927 delegates of the Government of the Union of South Africa and of the Government of India met at Cape Town from January 12th to February 4th, 1932, to consider the working of the Agreement and to exchange views as to any modifications that experience might suggest. The delegates had a full and frank discussion in the Conference, which was throughout marked by a spirit of cordiality and mutual good-will.

2. Both Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and that they should continue to co-operate in the common object of harmonising their respective interests in regard to Indians resident in the Union.

3. It was recognised that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to the economic and climatic conditions of India as well as to the fact that 80 per cent. of the Indian population of the Union are now South African-born. As a consequence the possibilities of land-settlement outside India, as already contemplated in paragraph 3 of the Agreement, have been further considered. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling Indians both from India and from South Africa, in other countries. In this investigation which should take place during the course of the present year, a representative of the Indian community in South Africa will, if they so desire, be associated. As soon as the investigation has been completed the two Governments will consider the results of the inquiry.

4. No other modification of the Agreement is for the present considered necessary.

5. Before passing on to the Transvaal Asiatic Tenure (Amendment) Bill, Honourable Members would, perhaps, like me to comment on the more important points in the settlement which I have just announced.

(1) Recognition by the two Governments of the need of continued co-operation in the common object of harmonising their respective interests in regard to Indians resident in the Union justifies the hope that friendly relations between South Africa and India, which are of such vital importance to the Indian community in the Union, will continue.

(2) It had become increasingly evident for sometime before the Conference met at Cape Town that Indian opinion both in South Africa and in India had become unfavourable to the scheme of assisted emigration to India. This was due to no shortcoming on the part of either Government but primarily to climatic and economic causes, and the fact that 80 per cent. of the Indian population of South Africa were born in the Union. The recognition of the Union Government that the possibilities of this scheme are now practically exhausted should be received with considerable relief by Indian opinion on both sides of the ocean.

(3) The proposal that the possibilities of land-settlement outside India should be examined merely carries out an integral part of the 1927 Agreement. It may be welcomed on two grounds :

(i) If it results in a satisfactory scheme of land settlement, it may provide an outlet, especially to the younger generation of Indians in South Africa, in a country where they may have greater opportunities both for economic development and for political self-expression.

(ii) The association of a representative of the South African Indian Congress in the investigation will not only be a valuable safeguard for the inquiry, but constitutes an experiment in collaboration between the Union Government and the Indian community in South Africa which, it is hoped, will be extended to other fields.

(4) The Agreement stands unmodified except as regards the scheme of assisted emigration to India, and the proposed exploration of the possibilities of land settlement elsewhere. This means, to mention only two points out of the last Agreement, that the Government of the Union continue to adhere to the policy of uplifting the permanent section of their Indian population, and

[Khan Bahadur Mian Sir Fazl-i-Husain.]

that the Government of India will continue to maintain in South Africa an Agent whose presence has admittedly proved most helpful alike to the Indian community in South Africa and to the promotion of friendship between the two countries.

6. I shall now endeavour to deal with the Transvaal Asiatic Tenure (Amendment) Bill. The Conference decided that it should be considered by a sub-committee consisting of two representatives of each Delegation. After discussion in the sub-committee Dr. Malan, who was one of Union representatives, agreed to place informally before members of the Select Committee, which had prepared Bill, suggestions of the delegates from India. Results of this consultation may be summarised as follows :

- (1) Clause 5 of the Bill which embodied the principle of segregation by providing for the earmarking of areas for the occupation or ownership of land by Asiatics has been deleted. Instead, the Gold Law is to be amended to empower the Minister of the Interior, after consultation with the Minister of Mines to withdraw any land from the operation of sections 130 and 131 in so far as they prohibit residence upon or occupation of any land by coloured persons. This power will be exercised after inquiry into individual cases by an impartial commission presided over by a judge, to validate present illegal occupations and to permit exceptions to be made in future from occupational restrictions of Gold Law. It is hoped that liberal use will be made of this new provision of the law so as to prevent the substantial dislocation of Indian business which strict application of the existing restrictions would involve, and to provide Indians in future with reasonable facilities to trade in the mining areas without segregation.
- (2) The Bill has also been amended so as to protect fixed property acquired by Asiatic companies up to 1st March 1930, which are not protected by section 2 of Act 37 of 1919. This will have the effect of saving many Indian properties which, though not acquired in contravention of the letter of the Act of 1919, were acquired contrary to its spirit.
- (3) Local bodies, whom clause 10 of the Bill required to refuse certificates of fitness to an Asiatic to trade on the ground that the applicant may not lawfully carry on business on the premises for which the licence is sought, shall have to treat a certificate issued by a competent Government officer to the effect that any land has been withdrawn from the restrictive provisions of sections 130 and 131 of the Gold Law as sufficient proof that a coloured person may lawfully trade on such land. As it is proposed to maintain hereafter a register of all lands in pre-declared areas where Asiatic occupation is permitted, such a provision should prove a valuable safeguard to the Indian community.

7. As against these important concessions, it has to be recognised that the recommendations of the Indian Delegation that areas like Springs and de-proclaimed land, to which the restrictions of clauses 130 and 131 do not at present apply, should not be made subject to them, and that leases for



ten years or more should not be treated as fixed property have not been accepted. On the balance, however, the amendments which, subject to ratification by the Union Parliament, have been made in the Bill represent a substantial advance on the original Bill.

8. I must apologise to the House for the length of the statement. I have endeavoured to make it as brief as is compatible with clarity. Government had hoped that it would be possible to make the announcement earlier, but this was found impossible as the results of the Conference have to be published in both countries simultaneously, and the Union Parliament re-assembles only to-day after the Easter recess. Government trust, however, that keeping in view the difficulties inherent in the problem, and after consideration of the statement which has been made to-day, Honourable Members will feel satisfied with the results achieved. (Applause.)

*Bill to amend in certain respects the law relating to occupation of certain land in the Province of the Transvaal by Asiatics and to provide for matters incidental thereto.*

(Introduced by the MINISTER OF THE INTERIOR.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. *Amendment of section one hundred and thirty of Act No. 35 of 1908 (Transvaal).—Section one hundred and thirty of the precious and Base Metals Act, 1908 (Transvaal) (hereinafter referred to as the Gold Law), is hereby amended by the addition of the following words at the end of sub-section (1) thereof “and no coloured person other than such bona fide servant may reside on or occupy any such ground”.*

2. *Amendment of section one hundred and thirty-one of Act No. 35 of 1908 (Transvaal).—Section one hundred and thirty-one of the Gold Law is hereby amended—*

(a) by the deletion of the words “be permitted to” in sub-section (1);

(b) by the deletion of the words “proclaimed land” in sub-section (1) and the substitution thereof of the words “or occupy any land, which has been or purports to have been proclaimed a public digging under any provision whatsoever of this Act or Law No. 15 of 1898 or of a prior law, and which has not been lawfully de-proclaimed, whatever its situation, the nature of its tenure, the nature and extent of any rights in regard thereto under this Act or any other law, or the condition of its surface may be, or may have been on the date of such proclamation.

3. *Retrospective effect of sections one and two.*—The provisions of sections one and two shall be construed as having come into operation on the first day of May, 1930: Provided that any coloured person who was lawfully residing on, or occupying any ground or land referred to in either of those sections immediately prior to the date when its provisions became or are, in terms of this section, deemed to have become applicable to such ground or land, shall be entitled to continue such residence or occupation, subject to compliance with the requirements of any other law.

4. *Prohibition of occupation of proclaimed land by coloured persons to continue after de-proclamation.*—(1) If any land which was at any time subject to the provisions of section one hundred and thirty or one hundred and thirty-one of the Gold Law, has before the first day of May, 1930, ceased to be a public digging it shall, nevertheless continue to be subject to those provisions of that section, or any amendment thereof, as if it were still a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee: Provided that any coloured person who was, on the first day of May, 1930, lawfully residing upon or occupying such land, shall be entitled to continue such residence or occupation subject to compliance with the requirements of any other law.

(2) Any land which was, at any time subject to any provisions of section one hundred and thirty or section one hundred and thirty-one of the Gold Law or any amendment thereof, shall, subject to any provisions of Act No. 18 of 1913 or of this Act which may be applicable thereto, remain subject to the provisions of the said section one hundred and thirty or one hundred and thirty-one even if it ceases to be a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee.

## [Khan Bahadur Mian Sir Fazl-i-Husain.]

5. *Exempted Areas.*—(1) Within one year after the commencement of this Act every municipal council or village board within whose area of jurisdiction Asiatics reside and within which area is included any ground or land referred to in section *one hundred and thirty or one hundred and thirty-one* of the Gold Law, or any amendment thereof, shall subject to any law relating to the laying out of township, define an area or areas within its area of jurisdiction for the accommodation of Asiatics and indicate in respect of any such area whether any Asiatic may reside but may not carry on business therein or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein.

(2) If the area or areas so defined are, in the opinion of the Minister of the Interior after consultation with the Minister of Mines and Industries, suitable and of sufficient extent for the purpose indicated as aforesaid, to meet the reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, he shall, subject to any law relating to the laying out of townships, by notice in the *Gazette*, define such area or areas as an exempted area or areas and indicate in such notice in respect of every such area, in accordance with the indication of such council or board, whether an Asiatic may reside therein but may not carry on business therein, or whether he may carry on business therein but may not reside therein, or whether he may both reside and carry on business therein.

(3) Any Asiatic may thereupon, notwithstanding the provisions of any other law, acquire the ownership of or any other real right in or a lease or other right of occupation of any land in any such area and may reside or carry on business thereon or permit any other Asiatic to reside or carry on business thereon, in accordance with such indication, subject to compliance with any law relating to residence or to any such business.

(4) If any such council or board fails to define in accordance with the provisions of sub-section (1) an area which is or areas which are, in the opinion of the Minister of the Interior, suitable and of sufficient extent to meet all reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, the Minister of the Interior shall, subject to any law relating to the laying out of townships, after consultation with the Minister of Mines and Industries, and with such council or board, as soon as may be, by notice in the *Gazette* define an area or areas within such area of jurisdiction as an exempted area or areas and indicate in such notice in respect of every such area whether an Asiatic may reside therein but may not carry on business therein, or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein, and the provisions of sub-section (3) shall thereupon apply in respect of any such area.

(5) No land may be included in an exempted area in terms of this section if the title deed of that land contains any servitude or condition prohibiting its transfer to or occupation by an Asiatic, unless the owner of every piece of land in whose favour such servitude or condition is intended to operate, signifies his consent in writing to such inclusion.

6. *Amendment of section one of Act No. 37 of 1919.*—Section one of Asiatic (*Land and Trading*) Amendment (Transvaal) Act (Act No. 37 of 1919), is hereby amended—

(a) by the deletion of the expressions "British Indian" and "Indian" wherever they occur and the substitution therefor of the words "coloured person";

(b) by the addition of the following new sub-sections (2) and (3), the existing section, as hereby amended, becoming sub-section (1):

"(2) The provisions of sub-section (1) shall not exempt any coloured person from any provision of the said section *one hundred and thirty or one hundred and thirty-one*, or any amendment thereof, in respect of any number of pieces of land in any township in excess of the number of pieces of land on which he resided or which he occupied in such township on the first day of May, 1919, or in respect of any area in such township in excess of the area on which he resided or which he occupied in such township on the said date.

(3) If any coloured person was, on the first day of May, 1930, residing upon or occupying any land and such residence or occupation was by virtue of any provision of the said section *one hundred and thirty or one hundred and thirty-one* or of this section unlawful, such coloured person may, subject to compliance with the requirements of any other law, nevertheless continue such residence or occupation till the thirtieth day of April, 1935: Provided that he has, before the first day of September, 1930, furnished the Minister of the Interior with a written notice, specifying the land which he unlawfully resides upon or occupies, the nature of such residence or occupation and the period during which he resided on or occupied such land and such other particulars in regard to such land, residence or occupation as the Minister may require him to furnish."

*Substitution of section two of Act No. 37 of 1919.*—Section two of Act No. 37 of 1919 is hereby repealed and the following new sections *two, three, four, five, six, seven, eight, nine, ten and eleven* substituted therefor the existing section *three* becoming section *twelve*.

2. *Restrictions in connection with certain fixed property.*—(1) The expression “fixed property” in Law No. 3 of 1885 (Transvaal) and in this Act shall be construed as meaning any real right in immovable property in the Province of the Transvaal outside an area assigned for the occupation of Asiatics under paragraph (b) of article two of the said Law, as an exempted area in terms of the Transvaal Asiatic Tenure (Amendment) Act, 1930, other than a mortgage bond over immovable property securing a *bona fide* loan granted in the ordinary course of business, for an amount which either alone or together with any other mortgage bond having priority over the first mentioned mortgage bond, does not exceed one half of the value of such property as at the time of the registration of such mortgage and shall include any lease of immovable property for a period of ten years or longer or any lease which empowers the lessee to renew it for any period or periods which, together with the period of the original lease, equal or exceed a period of ten years.

(2) No Asiatic company shall hold any fixed property.

(3) The provisions of sub-sections (1) and (2) shall not apply in respect of any fixed property which, on the first day of May, 1930, stood lawfully registered in any deeds registry in favour of—

(a) any Asiatic, as long as that fixed property is held by him or by any other Asiatic who inherited it from an Asiatic; or,

(b) an Asiatic company while held by such company.

(4) No person shall hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company, and any person who purports or agrees to hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company shall be guilty of an offence: Provided that the provisions of this sub-section shall not apply in respect of any fixed property held immediately prior to the fifteenth day of May, 1930, by any person on behalf or in the interest of an Asiatic or any Asiatic company, while so held by such person.

(5) Any fixed property registered in any deeds registry in favour of any Asiatic or Asiatic company which such Asiatic or company is debarred from holding by virtue of the provisions of Law No. 3 of 1885 (Transvaal) or of this Act, shall become the property of the State and any person other than the registrar of deeds or registrar of mining titles or any of their subordinate officers, who is in any way instrumental in effecting any such registration, in favour of an Asiatic or in favour of a company which is, on the date of such registration, an Asiatic company, shall be guilty of an offence:

Provided that if any such Asiatic or company purports to transfer such property to a person who may lawfully hold it, the rights of the State under this sub-section in respect of such property, shall terminate on the expiration of one year after the registration of such transfer in a deeds registry.

(6) Any condition or provision inserted after the fifteenth day of May, 1930, in any document whatever purporting to empower any Asiatic or Asiatic company to exercise any influence upon the transfer of fixed property shall be void.

3. *Notification of registrar of companies.*—(1) Whenever any private company holds any fixed property, any share in or debenture of such company held by or pledged to—

(i) an Asiatic; or

(ii) an Asiatic company; or

(iii) any person on behalf or in the interest of an Asiatic or an Asiatic company, shall be forfeited to the State.

(2) It shall be the duty of the secretary and of every director of any company referred to in sub-section (1), which holds any fixed property, to notify the registrar of companies whenever any Asiatic or Asiatic company or any other person on behalf or in the interest of an Asiatic or Asiatic company holds any share in or debenture of such first-mentioned company.

(3) Any secretary and director who fails to comply with the requirements of sub-section (2) shall be guilty of an offence unless he proves that he was ignorant of the fact which it was his duty, in terms of sub-section (2), to convey to the registrar of companies and that he could not reasonably have ascertained that fact.

[Khan Bahadur Mian Sir Fazl-i-Husain.]

4. *Safeguarding of existing rights.*—The provisions of section *three* shall not affect any share in or debenture of any company which was, on the first day of May, 1930, held by an Asiatic and not transferred by him since that date or by any other Asiatic who inherited it from an Asiatic : Provided that such company did not after the said date acquire any fixed property.
5. *Action to give effect to forfeiture of shares.*—(1) The secretary of any company a share wherein or a debenture whereof has been forfeited to the State in terms of section *three* shall make such entries in any register, book or document under the control of such company and issue such documents as the registrar of companies may direct for the purpose of giving effect to such forfeiture.
- (2) Whenever any such secretary fails to comply with any direction given to him by the registrar of companies in terms of sub-section (1), such secretary shall be guilty of an offence.
6. *Onus of proof.*—Whenever it has been proved in any proceeding under this Act, whether civil or criminal, that an Asiatic holds any share in or debenture of any company or that any other person holds any such share or debenture on behalf or in the interest of an Asiatic, such company shall be deemed to be an Asiatic company, unless the contrary is proved.
7. *Certain foreign companies not to hold fixed property.*—(1) No foreign company (as defined in section *two hundred and twenty-nine* of the Companies Act, 1926 (Act No. 46 of 1926), shall acquire any fixed property or shall be capable of holding any fixed property acquired after the first day of May, 1930, unless it has a place of business in the Union and has complied with the requirements of section *two hundred and one* of the said Act.
- (2) No Asiatic may occupy any land (other than land situate in an area wherein an Asiatic may hold immovable property) if such land is held by any foreign company or by any company in which a foreign company holds a controlling interest or if any such company holds any real right in respect of such land other than a mortgage bond referred to in sub-section (1) of section *two* or if any such company holds in respect of such land a lease referred to in that sub-section, provided that the provisions of this sub-section shall not apply to any Asiatic who is the *bona fide* servant of any person in lawful occupation of such land. Any Asiatic contravening this sub-section shall be guilty of an offence.
8. *Company with bearer shares or debentures may not permit Asiatics to occupy its fixed property.*—If any company which has issued any shares or share warrants or debentures entitling the bearer thereof to any rights in regard thereto, holds any land (other than land situate in an area wherein an Asiatic may hold immovable property) or a real right in respect of such land other than a mortgage bond referred to in sub-section (1) of section *two* or holds in respect of such land a lease referred to in that sub-section no Asiatic shall occupy such land (except as a *bona fide* servant of any person in lawful occupation thereof) and if any Asiatic occupies any such land in contravention of this sub-section he shall be guilty of an offence and if such occupation was permitted or could have been prevented by such company, the secretary and every director thereof shall likewise be guilty of an offence.
9. *Proof of authority to trade before issue of certificate for licence.*—(1) Any authority entrusted by law with the issue of any certificate which any person desiring to take out a licence to carry on any business or trade in the province of the Transvaal is required to produce before such licence may lawfully be issued to him, shall, subject to the provisions of sub-section (3) of section *one*, not issue any such certificate to any person applying therefor unless such person proves that the proposed holder of such licence and the person who will be in actual control of the business or trade to be licensed, are not Asiatics, or if they are Asiatics, that they may lawfully carry on the business or trade for which a licence is desired on the premises whereon such business or trade is to be carried on.
- (2) Any person whatever may, within two months after the issue of any such certificates by any such authority, and any applicant for such a certificate whose application therefor has been refused, may, within two months after such refusal, appeal against the decision of such authority to the magistrate of the district wherein the business or trade in question is to be carried on and such magistrate may cancel such certificate and any licence issued on the

strength thereof or may issue such certificate in lieu of such authority. The decision of the magistrate on any such appeal shall be subject to an appeal to the Transvaal Provincial Division of the Supreme Court, as if it were a civil judgment of a magistrate's court.

10. *Penalties.*—Any person who commits an offence under or contravenes any provision of this Act shall, on conviction, be liable to a fine not exceeding fifty pounds or in default of payment of such fine, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

11. *Definitions.*—In this Act—

“ Asiatic ” means any Turk and any member of a race or tribe whose national home is Asia, but shall not include any member of the Jewish or the Syrian race or a male person belonging to the race or class known as the Cape Malays ;

“ Asiatic company ” means any company wherein a controlling interest is held by an Asiatic ;

“ coloured person ” has the meaning assigned to that expression in section *three* of Act No. 35 of 1908 (Transvaal) ;

“ controlling interest ” in relation to any company means a majority of the shares or shares representing more than half the share capital or shares of a value in excess of half the aggregate value of all the shares in such company or shares entitling the holders thereof to a majority or preponderance of votes, or debentures for an amount in excess of half the share capital of such company or the power to exercise any control whatsoever over the activities or assets of such company ;

“ deeds registry ” include the mining titles office ;

“ licence ” includes any renewal thereof.

8. *Amendment of section one of Act No. 12 of 1924.*—Section one of Act No. 12 of 1924 is hereby amended by—

(a) the insertion of the word “ male ” after the word “ Malay ”;

(b) the deletion of the words “ section *two* ” and the substitution therefor of the words “ any provision ”.

9. *Short title.*—This Act may be cited as the Transvaal Asiatic Tenure (Amendment) Act, 1930.

\* \* \* \* \*

### *Extracts from the (Transvaal) Precious and Base Metals Act, 1908.*

(Known as the Gold Law of 1908, Act No. 35 of 1908.)

\* \* \* \* \*

130. *Prohibition against acquisition of rights under this Act by coloured persons.*—(1) Save as is provided in section twenty-four no right may be acquired under this Act by a coloured person ; and the holder of a right acquired under Law No. 15 of 1898 or a prior law or under this Act shall not transfer, or sub-let, or permit to be transferred or sub-let, any portion of such right to a coloured person, nor permit any coloured person (other than his *bona fide* servant) to reside on or occupy ground held under such right.

(2) Any person contravening this section shall be guilty of an offence, and liable on conviction to a fine not exceeding fifty pounds, and in the case of a continuing contravention to a fine not exceeding five pounds for every day during which such contravention is continued.

131. *Restriction on residence of coloured persons on proclaimed land in districts of Class A.*—(1) No coloured person shall be permitted to reside on proclaimed land in districts comprised in Class A, except in bazaars, locations, mining compounds and such other places as the Mining Commissioner may permit.

(2) Any coloured person contravening this section shall be liable on conviction to imprisonment for a period not exceeding one month, and upon such conviction the Mining Commissioner may cause any structures occupied by or erected for the use of such coloured person to be removed.

[Khan Bahadur Mian Sir Fazl-i-Husain.]

(3) Nothing in this section shall apply to coloured persons in the employ of a white person in so far as they live on the premises where they are so employed nor to coloured persons who at the commencement of this Act were lawfully in occupation of premises.

\* \* \* \* \*

*The (Union of South Africa) Asiatics (Lands and Trading) Amendment (Transvaal) Act, 1919.*

*Act No. 37 of 1919. Date of commencement—3rd July, 1919.*

To make further provision with reference to the prohibition of ownership of land by Asiatics and with reference to the restrictions as to the occupation of land and trading by them.

(Assented to—21st June, 1919.)

(Signed by the Governor-General in English.)

BE IT ENACTED by the King's Most Excellency Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows :—

1. Those provisions of sections *one hundred and thirty and one hundred and thirty-one* of Act No. 35 of 1908 (Transvaal) which relate to the

Certain prohibitions as to occupation of ground on Witwatersrand gold-fields not to apply to certain British Indians, etc.

residence on or occupation of ground held under a stand licence on proclaimed land by coloured persons and any provisions similar thereto contained in the conditions

of any deed of grant or freehold title in a Government Township (as defined in Act No. 34 of 1908, Transvaal) issued under the last-mentioned Act shall not apply—

(a) to any British Indian who on the first day of May, 1919, was, under the authority of a trading licence lawfully issued, carrying on business on proclaimed ground or on any stand or lot in such township, or to the lawful successor in title of any such Indian in respect of such business ; or

(b) to any person *bona fide* in the employment of such a British Indian or his successor in title,

so long as such British Indian or successor in title continues so to carry on business on the same ground or stand or lot on which or on any other ground or stand or lot in the same township in which it was being carried on on the first day of May, 1919 :

Provided that nothing in this section shall be construed as abrogating any exceptions contained in the said sections *one hundred and thirty and one hundred and thirty-one* or in the conditions aforesaid.

2. Those provisions of Law No. 3 of 1885 (Transvaal), and any amendments thereof heretofore enacted which prohibit a person belonging

Certain prohibitions and restrictions of Law No. 3 of 1885 (Transvaal) to apply to companies controlled by Asiatics.

to any of the native races of Asia from being an owner of fixed property in the Transvaal subject to certain exceptions specified in such amendments shall, subject to the same exceptions, be construed also as prohibiting

any registration of a mortgage over fixed property in favour of a person belonging to any of the native races of Asia, otherwise than as security for a *bona fide* loan or investment in the ordinary course of business and also prohibiting the ownership of fixed property in the Transvaal by any company or other corporate body in which one or more persons belonging to any of those races have a controlling interest and the registration of such a mortgage in favour of such a company or corporate body otherwise than as security as aforesaid :

The provisions of this section shall apply as from the first day of May, 1919, provided that in respect of any fixed property acquired by any such company or corporate body before the first day of May, 1919, the aforesaid provisions of Law No. 3 of 1885 (Transvaal) shall be construed as if this Act had not been passed. Any such company or other corporate body which may have acquired the ownership of fixed property since the first day of May, 1919, shall dispose thereof within a period of two years from the commencement of this Act, or within such further period as any superior court having jurisdiction where the property is situate on application may allow, and on the failure of such company or other corporate body so to dispose of such property then and in that case such property shall on the petition of any member of the public be sold by order of such a court.

3. This Act may be cited for all purposes as the Asiatics (Lands and Trading) Amendment Act (Transvaal), 1919.

Short title.

## CAPE TOWN AGREEMENT, 1927.

1. It was announced in April 1926 that the Government of India and the Government of the Union of South Africa had agreed to hold a Round Table Conference to explore all possible methods of settling the Indian question in the Union in a manner which would safeguard the maintenance of western standards of life in South Africa by just and legitimate means. The Conference assembled at Cape Town on December 17th and its session finished on January 12th. There was, in these meetings, a full and frank exchange of views which has resulted in a truer appreciation of mutual difficulties and a united understanding to co-operate in the solution of a common problem in a spirit of friendliness and good-will.

Both Governments re-affirm their recognition of the right of South Africa to use all just and legitimate means for the maintenance of western standards of life.

2. The Union Government recognises that Indians domiciled in the Union who are prepared to conform to western standards of life, should be enabled to do so.

3. For those Indians in the Union who may desire to avail themselves of it, the Union Government will organise a scheme of assisted emigration to India or other countries where western standards are not required. Union domicile will be lost after 3 years' continuous absence from the Union, in agreement with the proposed revision of the law relating to domicile which will be of general application. Emigrants under the assisted emigration scheme who desire to return to the Union within the 3 years will only be allowed to do so on refund to the Union Government of the cost of the assistance received by them.

4. The Government of India recognise their obligation to look after such emigrants on their arrival in India.

5. The admission into the Union of the wives and minor children of Indians permanently domiciled in the Union will be regulated by paragraph 3 of Resolution XXI of the Imperial Conference of 1918.

6. In the expectation that the difficulties with which the Union has been confronted will be materially lessened by the agreement now happily reached between the two Governments, and in order that the agreement may come into operation under the most favourable auspices and have a fair trial, the Government of the Union of South Africa have decided not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill.

7. The two Governments have agreed to watch the working of the agreement now reached and to exchange views from time to time as to any changes that experience may suggest.

8. The Government of the Union of South Africa have requested the Government of India to appoint an agent in order to secure continuous and effective co-operation between the two Governments.

*Annexure containing summary of the conclusions reached by the Round Table Conference on the Indian question in South Africa, 1927.*

I. *Scheme of assisted emigration.*—(1) Any Indian of 16 years or over may avail himself of the scheme. In case of a family, the decision of the father will bind the wife and minor children under 16 years.

(2) Each person of 16 years of age or over will receive a bonus of £20 and each child under that age a sum of £10. No maximum shall be fixed for a family. A decrepit adult who is unable to earn his living by reason of a physical disability may, at the discretion of the Union authorities, receive a pension in lieu of or in addition to the bonus. The pension will be paid through some convenient official agency in India out of a fund provided by the Union Government to such amount as they may determine. It is expected that the amount required will not exceed £500 per annum in all.

In every case the bonus will be payable in India on arrival at destination or afterwards, through some banking institution of repute.

(3) Free passage, including railway fares to port of embarkation in South Africa and from port of landing in India to destination inland, will also be provided.

(4) Emigrants will travel to India *via* Bombay as well as *via* Madras. Emigrants landing at Bombay will be sent direct from the ship to their destination at the expense of the Union Government.

Survey and certification of ships shall be strictly supervised and conditions on the voyage, especially in respect of sanitary arrangements, feeding and medical attendance, improved.

## [Khan Bahadur Mian Sir Fazl-i-Husain.]

(5) Before a batch of emigrants leaves the Union, information will be sent to some designated authority in India at least one month in advance giving (a) a list of intending emigrants and their families, (b) their occupation in South Africa and the occupation or employment which they would require in India, and (c) the amount of cash and other resources which each possesses. On arrival in India emigrants will be (i) advised, and so far as possible, protected against squandering their cash or losing it to adventurers, and (ii) helped, as far as possible, to settle in occupations for which they are best suited by their aptitude or their resources. Any emigrant wishing to participate in emigration schemes authorised by the Government of India will be given the same facilities in India as Indian nationals.

(6) An assisted emigrant wishing to return to the Union will be allowed to do so within three years from the date of departure from South Africa. As condition precedent to re-entry, an emigrant shall refund in full to some recognized authority in India the bonus and cost of passage including railway fares received on his own behalf and if he has a family, on behalf of his family. A *pro rata* reduction will, however, be made (i) in respect of a member of the family who dies in the *interim* or a daughter who marries in India and does not return, and (ii) in other cases of unforeseen hardship, at the discretion of the Minister.

(7) After expiry of three years Union domicile will be lost in agreement with the proposed revision of the law relating to domicile which will be of general application. The period of three years will run from the date of departure from a port in the Union and expire on the last day of the third year. But to prevent the abuse of the bonus and free passage by persons who wish to pay temporary visits to India or elsewhere no person availing himself of the benefits of the scheme will be allowed to come back to the Union within less than one year from the date of his departure. For purposes of re-entry within the time limit of three years, the unity of the family group shall be recognised though in cases of unforeseen hardship the Minister of the Interior may allow one or more members of the family to stay behind. A son who goes with the family as a minor, attains majority outside the Union, marries there and has issue will be allowed, to return to South Africa, but only if he comes with the rest of his father's family. In such cases he will be allowed to bring his wife and child or children with him. But a daughter who marries outside the Union will acquire the domicile of her husband and will not be admitted into the Union unless her husband is himself domiciled in the Union.

II. *Entry of wives and minor children.*—To give effect to paragraph 3 of the Reciprocity Resolution of the Imperial Conference of 1918 which intended that an Indian should be enabled to live a happy family life in the country in which he is domiciled, the entry of wives and children shall be governed by the following principles :—

- (a) The Government of India should certify that each individual for whom a right of entry is claimed, is the lawful wife or child, as the case may be, of the person who makes the claim.
- (b) Minor children should not be permitted to enter the Union unless accompanied by the mother, if alive, provided that
  - (i) the mother is not already resident in the Union, and
  - (ii) the Minister may, in special cases, permit the entry of such children unaccompanied by their mother.
- (c) In the event of divorce no other wife should be permitted to enter the Union unless proof of such divorce to the satisfaction of the Minister has been submitted.
- (d) The definition of wife and child as given in the Indians Relief Act (No. 22 of 1914) shall remain in force.

III. *Upliftment of Indian community.*—(1) The Union Government firmly believe in and adhere to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of educational and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people.

(2) It is difficult for the Union Government to take action, which is considerably in advance of public opinion, or to ignore difficulties arising out of the constitutional system of the Union under which the functions of Government are distributed between the Central



**Executive and the Provincial and minor local authorities. But the Union Government are willing :—**

- (a) in view of the admittedly grave situation in respect of Indian education in Natal, to advise the provincial administration to appoint a provincial commission of inquiry and to obtain the assistance of an educational expert from the Government of India for the purpose of such inquiry ;
  - (b) to consider sympathetically the question of improving facilities for higher education by providing suitable hostel accommodation at the South African Native College at Fort Hare and otherwise improving the attractiveness of the institution for Indians ;
  - (c) to take special steps under the Public Health Act for an investigation into sanitary and housing conditions in and around Durban which will include the question of
    - (i) the appointment of advisory committees of representative Indians ; and
    - (ii) the limitation of the sale of municipal land subject to restrictive conditions.
- (3) The principle underlying the Industrial Conciliation Act (No. 11 of 1924) and the Wages Act (No. 27 of 1925) which enables all employees including Indians to take their places on the basis of equal pay for equal work will be adhered to.
- (4) When the time for the revision of the existing trade licensing laws arrives, the Union Government will give all due consideration to the suggestions made by the Government of India Delegation that the discretionary powers of local authorities might reasonably be limited in the following ways :—
- (1) The grounds on which a licence may be refused should be laid down by statute.
  - (2) The reasons for which a licence is refused should be recorded.
  - (3) There should be a right of appeal in cases of first applications and transfers, as well as in cases of renewals, to the courts or to some other impartial tribunal.

**IV. Appointment of Agent.**—If the Government of the Union of South Africa make representations to the Government of India to appoint an agent in the Union in order to secure continuous and effective co-operation between the two Governments the Government of India will be willing to consider such a request.

**THE HONOURABLE MR. G. A. NATESAN** (Madras : Nominated Non-Official) : Sir, in view of the very important statement that has just been made by the Honourable Member who led the Delegation to South Africa, will the Government consider the desirability of allotting a special day for discussing this question ? If the answer be in the affirmative, when ?

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS** (Punjab : Non-Muhammadan) : Sir, I congratulate the Honourable Sir Fazl-i-Husain on whatever success that he has achieved in his labours and as this is a very important subject I request that a separate day be allotted for its discussion in the Simla session. By that time we shall be in a position to know public opinion in India as well as Indian opinion in South Africa.

**THE HONOURABLE MR. MAHMOOD SUHRAWARDY** (West Bengal : Muhammadan) : I also join the previous speakers and endorse their views and request Government to allot a separate day for discussing this question.

**THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN** : I fully appreciate, Sir, the desire of Honourable Members to discuss the statement after they have thoroughly studied it. If this desire exists during the Simla session, Government will be very glad to allot a day for the discussion of the Statement.

**BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL—**  
*continued.*

**THE HONOURABLE THE PRESIDENT :** The Council will resume consideration of the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, as passed by the Legislative Assembly. The question before the House at the moment is that clause 4 stand part of the Bill. The House has disposed of one amendment to that clause. There is a second amendment which is No. 4 on the Amendment List standing in the name of the Honourable Mr. Ghosh Maulik.

**THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK** (West Bengal : Non-Muhammadan) : Sir, the amendment which stands in my name runs thus :

“ That the following Proviso be added to clause 4, namely .

‘ Provided that nothing in this section shall bar an application on the ground that the arrest or detention is not in accordance with the procedure laid down in the local Act or the local Act as supplemented by this Act, but the merits or grounds of such arrest or detention shall not be called in question on such application ’.”

Sir, in my opening speech I have already explained the object of this amendment. I wish to make it clear that I do not ask for anything more than that when the procedure prescribed in the Act is not followed the High Court will be entitled to interfere. I can quite understand that an objection may be raised to produce before the court the evidence on the strength of which action may have been taken against a subject. If clause (a) or clause (b) of section 491 (1) was interfered with that might have been the result. I am not suggesting that but I am suggesting that the procedure laid down should be followed. For instance, that the arrest must be by an officer who is properly authorised, that after the arrest a report is made to the Local Government in time, that the order of detention is also passed in time, that thereafter the papers are laid before two judges and so on. There should be no question, if my amendment is accepted, of Government being forced to disclose any secret sources of information or otherwise incurring any risk such as may render the powers ineffective. I know, Sir, what fate awaits my amendment and I am fully alive to it. I am proud to be in the minority of one still fairness demands that I shall press the amendment before the House. Sir, I move.

**THE HONOURABLE SIR BROJENDRA MITTER** (Law Member) : Sir, I oppose this amendment mainly on the ground that it is unnecessary. The section which is sought to be amended says expressly that the powers conferred by section 491 shall not be exercised in respect of any person arrested or committed to or detained in custody under the local Act or the local Act as supplemented by this Act. Now, the House will recognise that when the arrest or commitment or detention is to be under the Act then the procedure prescribed by the Act must be followed, otherwise the arrest or commitment or detention would not be under the Act. It goes without saying. It is obvious. That being so, what is the use of elaboration in the way the amendment suggests ?

The amendment says :

“ Provided that nothing in this section shall bar an application on the ground that the arrest or detention is not in accordance with the procedure laid down in the local Act ”.

What is the difference between the expression “ under ” and the expression “ in accordance with ” ? It is only paraphrasing the section. It is one of the cardinal rules of drafting that you are not to use any unnecessary words and far less a paraphrase of the main section. The amendment is a mere paraphrase and I oppose it.

THE HONOURABLE THE PRESIDENT : The original question was :

“ That clause 4 stand part of the Bill.”

Since which an amendment has been moved :

“ That the following Proviso be added to clause 4, namely :

‘ Provided that nothing in this section shall bar an application on the ground that the arrest or detention is not in accordance with the procedure laid down in the local Act or the local Act as supplemented by this Act, but the merits or grounds of such arrest or detention shall not be called in question on such application ’.”

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

The motion was negatived.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK : Sir, I rise to oppose the retention of clause 4. Originally I had no intention to do so, and with that object in view suggested some minor amendments which should have been acceptable to the Government. But, Sir, I find the Government have taken a firm attitude with regard to them. Assurances have been given both in this House and elsewhere but when it came to actually incorporating them in the Act itself the Government take up an attitude of stubbornness. This unreasonable attitude of Government leads us to the conclusion and raises in our minds an apprehension, and a reasonable one too, that the Government are not sincere in their promise. A most reasonable suspicion is gaining ground in the minds of the public that Government will not stand by their assurances and will at the earliest possible opportunity back out of it. If the Government meant to do what they assure us they will, then I am sure these amendments would have been accepted. I find that I shall be justified in doubting the sincerity of the Government and am therefore driven to the conclusion that we must be whole-hoggers in our demands. Neither the assurances from the Home Member nor the brilliant advocacy of the Law Member will be able to disabuse the public mind of the impression of insincerity of the Government in this matter. We have asked the Government, entreated them and begged of them to include the assurances solemnly given by them in the Act itself, but alas, Sir, with what result ? I am therefore convinced that the drastic power which this clause seeks to give to the executive should not be given. It is a most atrocious piece of legislation and I strongly protest against the inclusion of this particular clause in the Bill.

THE HONOURABLE THE PRESIDENT (to the Honourable Sir David Devadoss who rose in his seat) : The Honourable Member has no right of reply. As I explained to him yesterday he has made one speech and he cannot make another. If he wished to speak further on this clause he might have taken the opportunity of speaking on each of the amendments.

[The President.]

The question is :

“ That clause 4 stand part of the Bill.”

The Council divided :

AYES—19.

Brayne, The Honourable Mr. A. F. L.  
Charanjit Singh, The Honourable Sardar.  
Chimman Lal, The Honourable Rai Bahadur Lala.

Drake, The Honourable Mr. J. C. B.  
Emerson, The Honourable Mr. H. W.  
Ghosal, The Honourable Mr. Jyotsnanath.  
Graham, The Honourable Major-General J. D.

Halim, The Honourable Khan Bahadur Hafiz Muhammad.

Israr Hasan Khan, The Honourable Khan Bahadur Sir Muhammad.

Johnson, The Honourable Mr. J. N. G.

Mehr Shah, The Honourable Nawab Sahibzada Sir Sayad Mohammad.

Mitchell, The Honourable Mr. D. G.

Mitter, The Honourable Sir Brojendra.

Muhammad Hussain, The Honourable Mian Ali Baksh.

Noon, The Honourable Nawab Malik Mohammad Hayat Khan.

Padshah Sahib Bahadur, The Honourable Saiyed Mohamed.

Shillidy, The Honourable Mr. J. A.

Suhrawardy, The Honourable Mr. Mahmood.

Tottenham, The Honourable Mr. G. R. F.

NOES—9.

Banerjee, The Honourable Mr. Jagadish Chandra.

Devadoss, The Honourable Sir David.

Dudhoria, The Honourable Raja Bijoy Sing.

Ghosh Maulik, The Honourable Mr. Satyendra Chandra.

Hussain Imam, The Honourable Mr. Abu Abdullah Syed.

Jagdish Prasad, The Honourable Rai Bahadur Lala.

Natesan, The Honourable Mr. G. A.

Ram Saran Das, The Honourable Rai Bahadur Lala.

Sinha, The Honourable Kumar Nripendra Narayan.

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. W. EMERSON (Home Secretary): Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Indian Christians): Sir, I wish to make a few observations on the amendment I moved. Though I have full sympathy with the Bill and though I made it quite clear that such a measure was very necessary at the present moment, yet the Honourable the Law Member, clever advocate as he is, I think side-tracked the issue by making it appear that this being an exceptional measure is enacted under exceptional circumstances and therefore my amendment ought not to be supported. I voiced exactly that sentiment when I said that at the present moment “ one shudders to think what would become of the country if these things are allowed to go on ” and therefore I supported the measure. The only point that I wished to make was that there ought to be a safety valve against any wrong arrest or wrong detention. I will make this one point at present. Supposing there is evidence against A that he is concerned in a very deep conspiracy which is likely to do very great harm to the people and to the country. Suppose that instead of A, B is arrested by mistake. Where is the remedy for him? No doubt, two judges will go into the question to see

whether there is evidence or not. But do those judges give notice to the person accused to show cause why he should not be put in custody or interned ? So far as I am aware, he is not given any such notice. Therefore, the man B, who is arrested instead of A, has no chance of showing that though all the evidence is true so far as A's concerned, yet owing to a mistake of somebody, he is arrested. Then, as regards clause 4, the Honourable the Law Member said that if any act is done under the Act, the High Court cannot interfere ; if it is not under the Act, then it is unnecessary. Sir, this reminds me of the story told of Khalif Omar who when the Alexandrian Library was taken by his General said :

"If any book contains anything which is not in the Koran, then you must destroy it ; if it contains anything which is in the Koran, then it is superfluous and therefore destroy it".

That is the argument, Sir, that the Honourable and learned Law Member addressed to the House. My point is that in exceptional cases the High Court may be allowed to go into the question, not as regards the evidence, not as regards the merits of the case, but as regards only the legality of the detention and to see whether the forms of law have been complied with. That is exactly what section 491 says and that exactly is what I want the High Courts to do. That being so, that power would not only help the Government in rectifying mistakes but it would also enable people to realise that they have got a remedy which they could always resort to. It is only in very exceptional cases that the High Court will interfere. It is only for exceptional cases that you should give the power to the High Court. You may trust the High Court to do its duty properly.

Sir, though I have lost my motion with regard to the deletion of clause 4, I am whole-heartedly in sympathy with the object of the Bill and therefore I must vote for the whole Bill.

**THE HONOURABLE MR. ABU ABDULLAH SYED HUSSAIN IMAM** (Bihar and Orissa : Muhammadan) : Sir, I rise to oppose the third reading of this Bill. In doing so, I wish to inform the Treasury Benches that I am actuated by my love for the English constitution. When the Englishmen came to India, we were in great darkness. The English system of law came as a breath of fresh air in India. We hailed the Englishmen as deliverers ; but times have changed. Now the Englishmen are trying to copy the methods of the oriental potentates and the methods that were followed by the Bourbons and Romanoffs. They have not only forgotten the glorious traditions of their own country, but they have also forgotten the things they did shortly after the War in Ireland. The position in Ireland was, if anything, worse than that of India, and England tried all the methods of the mailed fist and the iron heel, and still failed. But when they applied the healing balm of giving to the people of Ireland a due share in the government of their country, they not only succeeded marvellously well, but they also succeeded in breaking the backbone of the Sinn Fein Association, and the Commander-in-Chief of the rebel army became the ardent supporter of the British connection. As long as this system of rule by Ordinances and laws which are no laws in themselves is being continued, it can only serve the purpose of a palliative. It can never eradicate the virus that has been inculcated in India. The primary reason why you have terrorism in India is not antagonism to the British connection. It is simply a question of pounds, shillings and pence. You have given education to a tremendous lot of people who can find no employment, who have got no means of livelihood, and it is they who supply the raw material out of which these terrorists are made. As education is more advanced in Bengal than in any other part of India and there is dearth of employment, it is there

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that we find the greatest number of terrorists. Bengal is not in any way the solitary example. We have these things in the Punjab as well. The case of Bhagat Singh and the Meerut trial have shown, and shown sufficiently well, how widespread this terrorist movement is. I quite admit, Sir, that these high-handed laws might succeed for a time in stopping the active propagation of terrorism, but its under-currents will continue. These terrorists require more of reformatory methods to treat them, than methods which are meted out to hardened criminals who are guilty of moral turpitude. The only thing that I wish to bring forward to the notice of the House and to the Treasury Benches is that we tried this remedy for five years, and, as has been pointed out by the Honourable Mr. Emerson, it had no permanent curative effect, except the immediate palliation. It did not serve the purpose of curing India of terrorism. If you want to apply a curative treatment and rid India of this terrorism; the only method is to come with a liberal supply of reforms in the provinces and in the centre and that will cure India finally of all ills. Sir, I oppose the Bill.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): Sir, a few minutes more and this Bill will pass through this House as it has passed through the democratic Assembly; and I am sure in a few days it will become an Act. I venture to make a few observations in a vein quite different from that of the last speaker. In my opinion a great Government must demonstrate its political wisdom by the magnanimity with which it uses these somewhat extraordinary powers it has obtained at the hands of the Central Legislature. It is a tragedy, a tragedy beyond description that Bengal, once the home of the great pioneers of social reform and of education, the home still of great scientists, artists, poets and others who have obtained world-wide reputation, should at the same time be the field for nurturing terrorists. It is really a tragedy and it is time that something is done to probe into this mystery, for I believe, apart from the political aspirations which have not been given legitimate scope at the hands of Government, there lies the deep, the significant fact of the economic trouble that has been facing not only India, but Bengal in particular. I do hope, as they did in Ireland, a great step will be taken to raise a large loan, if necessary, and thereby create new industrial and commercial enterprises which might find useful occupation for some of these intelligent, earnest but utterly misguided youths; and may I hope that with the advent of the new Governor of Bengal who, I am told, has had great experience in Ireland, the Government of India will give him all possible support to enable him to make a new start? Cannot something be done to strike the imagination of the people of Bengal and make them believe that Government, while it is anxious to put down terrorism, is, at the same time, equally anxious to satisfy the legitimate aspirations of the people, and above all put itself to the trouble of giving relief to those who are suffering from unemployment?

THE HONOURABLE SIR BROJENDRA MITTER: Sir, I do not want to take up the time of the House except for answering a question which was very legitimately put by the Honourable Sir David Devadoss. Sir, while appreciating the spirit in which he put the question, I wish to draw his attention to section 9 of the Bengal Act which provides some safeguard against errors in the matter of arrest or detention. Section 9 of the Bengal Act provides that the two judges who are to scrutinise the facts placed before them will have a statement of the allegations against the person in respect of whom an order of detention or arrest is made and that person will be given a chance of answering those allegations. I admit that that is not as satisfactory as an

open trial where allegations are tested by cross-examination. But as I pointed out yesterday in the peculiar circumstances of the case an open trial is not desirable in the interests of the community at large. I only wish to say that it is not correct to say that the detenu gets no chance to answer allegations against him. Section 9 expressly provides for a copy of the allegations to be given to him and he is given an opportunity to answer them.

THE HONOURABLE MR. H. W. EMERSON : Sir, there are one or two points that have been raised by Honourable Members in the final stage of the debate to which I should like to reply. In the first place, I would like to thank Honourable Members of this House for the support that they have given to a measure, the principles of which are repugnant to them. The fact that they have given support to it shows that they appreciate the entirely abnormal conditions that now prevail in Bengal and that they accept the duty and responsibility of giving to the Local Government their support in these abnormal times. Next, I would like to reply to some remarks made by the Honourable Mr. Ghosh Maulik when he suggested that assurances given by Government will be overlooked, and in effect, that they are merely given for the purpose of getting this Bill through the House and then are deliberately ignored. There is, Sir, no foundation whatsoever for a suggestion of that kind. The specific assurance given in regard to this Bill has been this, that in regard to the treatment of persons who are transferred from Bengal to other provinces no effort will be spared to make, so far as is possible, the conditions of treatment the same as they are in Bengal. That assurance has been given in absolutely explicit terms and it will be honoured. The Honourable Mr. Hussain Imam raised a general question of great importance that has implications going beyond this particular Bill and which relate to the general policy of Government. He quite rightly pointed out that measures of this kind, whether they take the form of the Bengal Criminal Law Amendment Act or the form of Ordinances, are not by themselves remedies for the ills from which India is suffering. With that proposition the Government are in complete agreement. From the Honourable Member's remarks, however, a person who is ignorant of the recent and the present history of India would not, I think, have drawn an accurate impression of what the policy of the Government of India is at the present time. There are two sides to that policy. The first side one may call the preventive side. Some people call it the repressive side : I think "preventive" is the better word. That side is represented by Bills of the character before the House and by measures such as Ordinances and so on. There is the other side, the constructive and progressive side. And that is the side to which Government attach infinitely more importance than to the preventive attitude. The constitutional side is the one to which at the present time much more prominence is being given by Government than to the preventive side. Can anyone doubt, Sir, that every effort is now being made to press forward with constitutional reforms that will be acceptable to the people of India and which one may hope will go a very long way in meeting the evils with which we have now to deal? The Honourable Mr. Natesan referred to the economic conditions in Bengal as being, at any rate, partly responsible for the terrorist movement. I think it is generally recognised that, if economic conditions were not so unfavourable, the revolutionary movement would not obtain recruits so easily as it is now able to do. It is also recognised by the Government of India and the Government of Bengal that measures of detention are not in themselves a complete remedy for the revolutionary movement. They regard such measures merely as one means of dealing with it—a very important means because it is the most powerful weapon by which they can come to direct grips with the persons who engage in these outrageous activities. But Government realise

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equally that these measures must be supplemented and accompanied by other measures—by the creation of public opinion, by the institution of beneficent activities, by reformatory influences and by alienating the sympathy of those persons who are now sympathetic with the movement and give assistance and encouragement to it. It is almost unnecessary to say that the Government of India will give to the Government of Bengal and to the head of the province who has just taken over charge at a difficult and critical time every measure of support not only on the preventive side but equally, and with much greater pleasure, on the constructive and progressive side.

Sir, with these few words I ask that the Bill be passed. One may express a hope that the Bill will in practice be even of shorter duration than the period for which provision is made, that other influences will come into operation and that this Bill will cease to have effect, not because powers are surrendered while the necessity remains for their use, but because there is no further necessity of giving effect to them. (Applause.)

**THE HONOURABLE THE PRESIDENT :** The question is :

“That the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

**THE HONOURABLE SIE BROJENDRA MITTER (Leader of the House) :** The Council, Sir, has still to dispose of four Bills, namely, the Foreign Relations Bill and the Sugar Industry Bill, which were laid on the table yesterday, and the Indian Air Force Bill and the Indian Tariff (Wireless Broadcasting) Amendment Bill, which were laid on the table to-day. I ask your direction as to the date or dates on which these Bills should be proceeded with. When these Bills have been disposed of, the business of the session will have been concluded.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Sir, I beg to suggest that these Bills being practically non-controversial be taken into consideration to-morrow if possible, and that you, Sir, use your power to allow that being done.

**THE HONOURABLE SIE DAVID DEVADOSS :** I join in the request that the Bills should be taken up to-morrow.

**THE HONOURABLE THE PRESIDENT :** I am glad that the House has given me some assistance in this matter. As Honourable Members are aware, in arranging the programme for the rest of the session my one desire is to suit the convenience of the majority of Honourable Members. Assuming that the Honourable Member who first spoke was speaking for his party and assuming also that the Government are indifferent in the matter as to when the Bills should be taken up, I think I may say that the majority of the House will be glad if the Bills are taken up at the earliest possible moment. I, therefore, on the assumption that notice is given to-day in all cases for the consideration of the four Bills, if it has not already been given, and that amendments will have to be admitted at short notice by the Members of the Government in charge of these Bills, direct that they be put on the paper for to-morrow morning.

The Council then adjourned till Eleven of the Clock on Wednesday, the 6th April, 1932.