

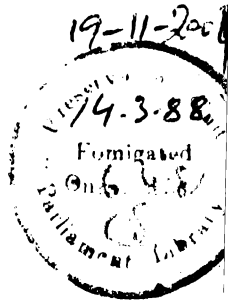
Friday, 5th March, 1937

THE
COUNCIL OF STATE DEBATES

VOLUME I, 1937

(16th February to 8th April, 1937)

FIRST SESSION
OF THE
FOURTH COUNCIL OF STATE, 1937



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COUNCIL OF STATE.

Friday, 5th March, 1937.

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

MEMBERS SWORN.

The Honourable Sir Bertrand Glancy (Political Secretary).

The Honourable Mr. Kenneth Grant Mitchell (Government of India : Nominated Official).

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 March, 1937, namely :—

A Bill further to amend the Indian Limitation Act, 1908, for a certain purpose ;

A Bill further to amend the Indian Tea Cess Act, 1903, for a certain purpose ; and

A Bill further to amend the Indian Army Act, 1911, for a certain purpose,

STANDING COMMITTEE FOR ROADS.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) : Sir, I move :

“ That this Council do proceed to the election, in such manner as may be approved by the Honourable the President, of three Members to serve for the remainder of the current financial year on the Standing Committee for Roads which has been constituted to advise the Governor General in Council in the administration of the Road Fund during that year.”

The Motion was adopted.

CENTRAL ADVISORY BOARD OF EDUCATION IN INDIA.

THE HONOURABLE KUNWAR SIR, JAGDISH PRASAD (Education, Health and Lands Member) : Sir, I move :

“ That the Members of this Council do proceed to elect, in such manner as may be approved by the Honourable the President, one person from among their numbers to be a member of the Central Advisory Board of Education in India.”

The Motion was adopted.

CENTRAL ADVISORY BOARD OF HEALTH.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member): Sir, I move:

"That the Members of this Council do proceed to elect, in such manner as may be approved by the Honourable the President, one person from among their numbers to be a member of the Central Advisory Board of Health constituted by the Government of India."

The Motion was adopted.

STANDING ADVISORY COMMITTEE FOR THE INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary): Sir, I move:

"That this Council do proceed to elect, in such manner as the Honourable the President may direct, two non-official Members to serve on the Standing Advisory Committee for the Indian Posts and Telegraphs Department."

The Motion was adopted.

IMPERIAL COUNCIL OF AGRICULTURAL RESEARCH.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member): Sir, I move:

"That this Council do proceed to elect, in such manner as the Honourable the President may direct, one Member to sit on the Imperial Council of Agricultural Research and its Governing Body."

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: With reference to the 5 Motions which have just been adopted by the Council, I have to announce that nominations to each of the 5 Committees will be received by the Secretary up to 1 P. M. on Saturday, the 6th March, 1937, and election, if that proves necessary, will be held on the 9th March, 1937.

CONTEMPT OF COURTS (AMENDMENT) BILL.

THE HONOURABLE MR. A. DEC. WILLIAMS (Government of India: Nominated Official): Sir, I move:

"That the Bill to amend the Contempt of Courts Act, 1926, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Sir, the object of this Bill is to place beyond all doubt the intention of the Legislature in enacting the Contempt of Courts Act, 1926. That intention was set out very clearly in the Statement of Objects and Reasons to the Bill which became eventually the Act of 1926. That intention was also repeatedly stated in the Legislative Assembly by Sir Alexander Muddiman at various stages of the Bill's passage. It was again set out very clearly in this Council by the Honourable Mr. Crerar who piloted the Bill here. That intention was that in no case should a High Court inflict punishments of imprisonment exceeding six months for any contempt. The immediate necessity for this Bill arises from a recent decision of the Lahore High Court, which has held that the limitation of six months imposed by the Act of 1926 relates only to

punishments of contempts of courts subordinate to a High Court ; but that that limitation does not apply to punishment of contempts of High Courts themselves, and that, so far as these contempts are concerned, the High Court retains its common law power to inflict unlimited punishment. I think that Honourable Members, having regard to the proceedings, both in another place and here when the Act of 1926 was being passed into law, will agree that it is beyond doubt that the intention of the Legislature was to limit the powers of the High Courts to six months as a maximum term of imprisonment for all contempts, whether contempts of subordinate courts or contempts of High Courts, and all that this Bill does is to place that intention beyond all doubt and give effect to it in such a way that there can no longer be any ambiguity on the point.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, I desire to support this Bill. I think that this Bill is a step in the right direction. As the Honourable Mr. Williams has just reminded us, this Bill has been necessitated by a recent case which happened in the Lahore High Court. There a gentleman who is no more was sentenced to imprisonment for an indefinite period because he would not offer an apology. I think, Sir, there ought to be a limit to the punishment which a Court can give in a case of contempt. As a matter of fact some of us think that the law of contempt is in many ways archaic and that there ought to be some restrictions on this law of contempt. It is not right that the Court should have unlimited summary jurisdiction in contempt cases.

THE HONOURABLE THE PRESIDENT : Can you tell us what is the law in England ?

THE HONOURABLE MR. P. N. SAPRU : Sir, even in England there is a feeling that the law of contempt is too wide. There has been agitation even in England for a change in the law of contempt. The feeling is that the power in regard to contempt has not in all cases been exercised wisely by some of our High Courts, and therefore I hope, in view of the recent decisions of the Privy Council, that the question of a revision of the contempt law will be taken up at an early date by the Government of India. With these words I give my support to this Bill.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated : Indian Christians) : I wish to know whether the Government have circulated this Bill to the High Courts in India.

THE HONOURABLE MR. A. DEC. WILLIAMS : The Bill of 1926 was circulated to High Courts and the High Courts sent in their opinions on that Bill. This Bill merely gives effect to the intention of the Act of 1926.

THE HONOURABLE SIR DAVID DEVADOSS : Sir, I am afraid I cannot give my support to this Bill. No doubt in a recent case it was felt that a High Court dealt very harshly with a person charged with contempt of itself, but I can think of instances where mere simple imprisonment for six months would not meet the ends of justice. Suppose a High Court appoints a Receiver and the Receiver is asked to render his accounts and he refuses to render or fails to render his accounts. If he is simply sent to jail for six months, what is to become of the property of the minor or other person on whose behalf he was

[Sir David Devadoss.]

appointed as a Receiver? He will be able to flout the Court and say, 'you may send me to jail', and there is an end of it. He may have anything from Rs. 20,000 to 2 lakhs or more in his possession and it will be difficult to get the money from him. Is the High Court going to file a suit against him and get a decree and all that? Then, take the case of an injunction against the erection of a building which shuts out light and air from another building. Suppose the injunction is not obeyed. The owner of the property may not be liable but the contractor may be sent to jail for six months; but the object of the injunction is gone; the house has been built and nothing more can be done about it. Is this Council and the other part of the Legislature going to allow such a state of things to exist? That is a case in which the High Court's order is of no use at all, and I can multiply instances of that kind. Therefore, I submit the jurisdiction of the High Courts should not be unduly curbed. In cases where for instance a man refuses to answer a question in Court no doubt six months is an ample punishment; but in other cases its orders may be flouted and there will be no remedy.

THE HONOURABLE THE PRESIDENT: When this Bill is passed, will it override the common law powers?

THE HONOURABLE SIR DAVID DEVADOSS: I should think so, because it is very wide. This is how the Bill reads—"Provided further that notwithstanding anything elsewhere contained in any law....". This will unduly curb the power of a Court of Record. Sir, this question must have been discussed by some people at some time. If you go into the history of it, there are three High Courts in India which have received their powers from the old common law, and those are Madras, Bombay and Calcutta. Originally they were called Supreme Courts. They were King's Courts, and as such administered the common law of England and as His Majesty's Judges they exercised the powers which His Majesty's Judges exercised in England. When the High Court Act was passed the Supreme Court *foujdari* and *dewani* were amalgamated and were made into one High Court. But the High Court, as part of the Supreme Court, always exercised its jurisdiction in committing for contempt. No doubt afterwards other High Courts also exercised the same power in regard to contempt. This power ought not to be taken away by an Act like this. I can multiply instances of the kind I have quoted in which the High Court will be simply powerless. Suppose the High Court under some jurisdiction orders a man to pay Rs. 20,000, and the man refuses and says he will go to jail. What is the High Court to do? (*An Honourable Member:* "Execute an order under the C. P. C."). Suppose, as I have said, in the face of an injunction a man puts up a building obstructing the light and air from another building. The contractor may be sent to jail for six months, but the building is there. You will have no remedy because the remedy is exhausted. The only remedy is the injunction against his putting up that building. The moment that is exhausted you have no remedy. You cannot punish him under the criminal law, and the remedy under the civil law is exhausted and he has his building for all time.

I submit, Sir, all these objections ought to be considered very carefully before a Bill of this kind is brought in. We have only one bad instance of a High Court exercising the power to send a man to jail indefinitely; and in that case even, it was open to that person to purge his contempt, as we say, by apologizing. Is the power of the High Courts to be taken away because one man refused to apologize in a particular case and the power was used against him?

THE HONOURABLE THE PRESIDENT : What would happen in the case of a recurring contempt ?

THE HONOURABLE SIR DAVID DEVADOSS : The remedy is lost. I could multiply the instances I have quoted but I do not want to take up the time of the Council. These things ought to be carefully considered and just because there has been one bad case Government ought not to rush through a Bill like this. If the opinions of High Courts are taken they will be able to put forward a number of cases in which it will be impossible for them to exercise their jurisdiction with a handicap like this.

THE HONOURABLE MR. BIJAY KUMAR BASU (Bengal : Nominated Non-Official) : Sir, I am afraid my friend, the Honourable Sir David Devadoss, has not given this matter the consideration that it deserves. I can say straight off that I support the Bill and I am only sorry that it has not gone further. For one thing, Sir, as my friend the Honourable Mr. Sapru pointed out, the law of contempt is an archaic one. Here for one thing judges are the prosecutors and after all the judges, however dignified their position, are human beings. I do not think that could be contradicted. Then, Sir, I wanted this Bill to go further, because there are two kinds of contempt : one a contempt which can be shown in the presence of the court or in relation to a particular pending case or in relation to some order which the court has passed ; another class of contempt is by scandalising the court, supposing a newspaper makes an adverse comment on the High Court not with reference to any particular case, nor with reference to any pending case, nor against any order. I will give you an example, the last "Amrita Bazaar Patrika" case in Calcutta. That particular paper said something which went according to the judges against the independence of the judiciary. If I remember the words aright, the paper said that the Judges of the High Court were hobnobbing with the executive and consequently they had lost their independence. That matter was taken up and the trial proceeded in a summary manner. That particular contempt was not shown in reference to any pending case or with reference to any order that the High Court had passed. It was a comment, a general comment ; it was certainly a contempt. But I should have thought that the law would have been such that the matter should not have been proceeded with summarily. The High Court ought to have gone through the fuller procedure in that particular case. Now, I would just remind Sir David Devadoss about the building injunction case that he quoted. The man has a remedy. Supposing there is an injunction against the putting up of a particular building and the man disobeys the order. It is not that the High Court is helpless or the parties are helpless. Parties can certainly move the High Court on a plaint saying that that particular building should be demolished and I am sure on a case properly made out the High Court will order the demolition of the building and would under the ordinary Civil Procedure Code be able to exercise its jurisdiction and get the building demolished. So I do not think that it is perfectly correct to say that either the parties or the Courts are absolutely without remedy. The only thing that strikes me is that in case of contempt the accused does not know where he stands. He does not know under what jurisdiction the High Court is proceeding, whether it is proceeding under criminal jurisdiction, or under civil jurisdiction, or whatever the jurisdiction the Court may assume. He does not know who are his prosecutors. He is not given formal charges. It is very difficult for a lawyer to defend a person accused of contempt of court, because he really does not know under what law he is being proceeded with. As a matter of fact, in a particular case in the High Court of Calcutta, I remember Counsel asked the

[Mr. Bijay Kumar Basu.]

Judges before he proceeded to open the case, " My Lords, I would like to know under what jurisdiction your Lordships are sitting." I was present in that court when I found 7 or 5 judges—I do not remember. They were sitting and they began consulting one with the other and they took more than five minutes to answer that question. And after all the answer was, " Well, it is the inherent jurisdiction of the High Court ". If the law of contempt is regularised and if it is put in a regular way, I think people would know where they were. People will be very chary to commit that offence of contempt and why should not they. . . .

THE HONOURABLE THE PRESIDENT : They would know where they are only so far as the sentence is concerned.

THE HONOURABLE MR. BIJAY KUMAR BASU : Therefore my complaint is that it has not gone far enough. Six months for contempt I think is a very long sentence and that appears to me at any rate to be a very deterrent sentence.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : We commit contempt of the Government every day, but we never get six months.

THE HONOURABLE MR. BIJAY KUMAR BASU : Contempt of court is a different thing, if I may remind my friend Mr. Sapru, that contempt of Government in a Legislature is no contempt. Here we are free to air our views, whether they are seditious or disloyal. If Sir David Devadoss would be good enough to bestow a little more attention and forget for the time being that he was a Judge of a High Court. . . .

THE HONOURABLE THE PRESIDENT : You cannot say that he has not paid attention. He was one of the most distinguished Judges of the Madras High Court.

THE HONOURABLE MR. BIJAY KUMAR BASU : I know, Sir ; that is why I am appealing to him to bestow a little more attention and forget for the time being that he was on the Bench of the Madras High Court.

THE HONOURABLE HAJI MUHAMMAD HUSAIN (United Provinces West : Muhammadan) : Sir, I give my whole-hearted support to the Bill, and as the Honourable Mr. Sapru said I also feel that it is a pity that it has not gone far enough. The law of contempt is administered by the Judges who are themselves complainants and who as human beings may be very sensitive and touchy. The more the limitations we place on their power, the better it is. The law of receiver particularly gives a sort of temporary relief. The punishment for contempt of court is an additional punishment for a person who commits contempt or disobeys the order of the court. So far as the Honourable Member cited the instance of receiver, the question does not arise as he is under the control of the court which appoints the receiver.

THE HONOURABLE THE PRESIDENT : You want to urge that the Receiver can be prosecuted under the Indian Penal Code ?

THE HONOURABLE HAJI MUHAMMAD HUSAIN : Yes. The Receiver can be prosecuted under the Penal Code. Besides that, under the Civil Procedure Code, there are other remedies for carrying out the orders. Over and

above that the law of contempt makes him liable for the punishment. Similarly in the case of injunctions, as pointed out, the remedy is there and it does not hamper justice at all. So far as the punishment for contempt is concerned, I think six months is quite sufficient. I have not heard of indefinite imprisonment; even in cases of most serious kind where transportation for life is given, you see, Sir, that there is a limit even to that transportation; and here in the law of contempt, which may involve very honest and patriotic people and make them liable simply because a certain judge is touchy, we find that he can be put in prison indefinitely, even more than transportation. Therefore, with these remarks, I support this motion.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muham-madan) : Sir, after listening to the debate on this very interesting Bill, I am tempted to make one or two observations. First of all till the Punjab High Court recently held that the Act of 1926 did not apply to High Courts, I think most members of the legal profession in this country believed that the Act of 1926 was intended to apply to High Courts as well. I find that that point is made clear in the Statement of Objects and Reasons. This is what it says :

“The original intention of the enactment of section 3 was to restrict the powers of High Courts in the punishment of any contempts whether of themselves or of Courts subordinate to them. The Bill proposes to make the intention clear.”

I think this is a very important point of principle, and in order to vindicate the interpretation placed by the Punjab High Court the Judges were content to prolong the period of imprisonment beyond six months by a single day. That is to vindicate their view of a law. If the original intention of the Act of 1926, as the Statement of Objects and Reasons now clearly says, was to apply it even to the High Courts, I think the sooner the amending Act is passed the better. The only other observation I would like to make, Sir, is this, that in a matter like this two conflicting interests are involved. One is the maintenance of the dignity and prestige of the High Court so as to prevent contempts. That is an object to which every citizen ought to subscribe wholeheartedly. Though sometimes the Judges may exercise their powers arbitrarily, I think the law should provide them with sufficient means to prevent contempt. The other is the question of the liberty of the citizen and no law should give any power to any court to put a man in jail for an indefinite period. When subordinate courts exercise their powers in an arbitrary manner, there is a remedy in the ordinary powers of revision and general control, but when the High Court itself chooses to put a man in jail indefinitely there is really no other court from which any redress can be sought. Therefore, I do not really know on what grounds my friend Sir Devadoss wants that the Bill should make no alteration in the existing law as interpreted by the Punjab High Court. I think it will lead to great hardship. Every offence, however heinous it may be, has its own limit of punishment. Punishment varies according to the nature of the crime. How contempt of court stands apart from other offences I fail to see. I think the six months period is if anything too long and not too short, and any claim on the part of the High Courts for power to keep people in jail indefinitely is I think not justified. Taking all the circumstances into consideration and in view of the fact that the original intention of the Act was to apply to High Courts also, this measure is on the whole I think a beneficial measure and I support it wholeheartedly.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, the arguments employed by my Honourable friend, Sir David Devadoss, if I may say so, would have been more appropriate in the debates of 1926. As I understand

[Mr. A. deC. Williams.]

him, he is not taking objection to this Bill, he is not saying that this Bill is wrong ; he is saying that the intention of the Legislature in 1926 was wrong. Unless he can show that something very material has taken place since 1926, I do not see any reason why the Legislature should change its intention.

As regards the charge of unseemly haste, it seems to me that the Government, having waited for 11 years to give effect to the intention of the Legislature, might rather be charged with undue delay. Before the Bill was passed into law in 1926 it was circulated for public opinion. The views of the High Courts were taken. I may say that the majority view of the High Courts was against the proposal, particularly against the proposal to limit their powers. Nevertheless the Act was passed into law and there is no question that it was the deliberate intention of the Legislature in 1926 to limit the powers of the High Court, and I do submit, Sir, that, unless it can be shown that that intention should be changed, this Bill should be passed into law.

THE HONOURABLE THE PRESIDENT : Motion moved :

“ That the Bill to amend the Contempt of Courts Act, 1926, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I move :

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

THE HONOURABLE SIR DAVID DEVADOSS : Sir, I wish to make only one or two remarks. The Honourable Members who spoke here probably were under the impression that, when a Court sends a person to jail for contempt for six months, it means that he has to serve all the six months. But the next day he can purge his contempt and he can be released. That is forgotten. That is the reason why a time limit ought not to be put.

Then, as regards the objects and reasons of the Bill of 1926, as everybody knows, the courts are bound not to consider the objects and reasons or the speeches made in the Legislature. Then again, my Honourable friends were under the impression that this Bill will take away the power of the High Court to commit anyone for contempt. Of course, if the Legislature is so pleased to take away the power of the High Court to deal with contempt, it is another matter. For instance, my learned friend Mr. Basu spoke of the “ Amrita Bazaar Patrika ” case and I can mention other cases as well. We are not concerned at present with the question of the power of the High Court to commit for contempt. We are only concerned with the question of the length of the sentence. My point is that, because one High Court acted in a particular way and allowed a person to be in jail for a long time, the power of other High Courts ought not to be taken away. As I said, Sir, the question of contempt is a matter between a person and a court. The moment he purges his contempt, the moment he apologises or obeys the order of the court, he will be released and the sentence will not take effect. That ought to be borne in mind before we take away the power of the High Court.

THE HONOURABLE THE PRESIDENT : The Court is not bound to accept the apology.

THE HONOURABLE SIR DAVID DEVADOSS: Judges are ordinary human beings. Take for instance the case of "The Leader" which happened some time back. "The Leader" would not apologise.

THE HONOURABLE MR. P. N. SAPRU: My Honourable friend is quite wrong.

THE HONOURABLE SIR DAVID DEVADOSS: I am quite right. My learned friend's father appeared and he said his instructions were not to tender an apology. I carefully read that case. If you wish to deprive the Judges of the right to deal with contempt, that is another matter. Of course, with that we are not concerned here, and these points do not affect the present question. The present question is whether the power of the High Courts should be limited to only 6 months, and that, whether their order is carried out or not, the man should be released. My submission is that it would certainly prejudicially affect the jurisdiction of the High Courts and that in some cases at least justice will fail. With these words, Sir, I oppose it.

THE HONOURABLE MR. BIJAY KUMAR BASU: I just want to say one thing through you, Sir, to Sir David Devadoss, that I was absolutely under no delusion. I know that a man when he is convicted for contempt of court is released generally speaking when he purges that contempt. But at the same time, I do not think that we should allow the courts, if they wanted, to prolong the imprisonment for more than 6 months, whether the man purges his contempt or not. It is inhuman to think that simply because a man has done something which the court thinks is contempt the man should be incarcerated for his whole life.

THE HONOURABLE SIR DAVID DEVADOSS: With your permission, Sir, may I put a question? During the last 150 years, has there been a case where when a man offered an apology and purged his contempt still the court held that the man should remain in jail? Can the Honourable Member give a single case in which a court either in this country or in England acted in this manner during the last 150 years?

THE HONOURABLE MR. BIJAY KUMAR BASU: Sir, I can give the same argument to support what I am saying. If that is not so, can my friend give you one case either in India or in England where a man has been put into jail for more than six months except in that particular case in the Punjab? I have not heard of any such case in my experience, and I would ask my Honourable friend to enlighten me if I am wrong. If that is so, it is no use giving them this indefinite power when a sentence of six months' imprisonment would suffice. Supposing a man does not purge his contempt for six months. Certainly you do not think that the courts will be vindictive enough to keep him in jail for the rest of his life. Supposing a man is cursed enough not to apologise—not to purge his contempt, as you put it. Is that any reason why he should be sent to jail for life? In this particular offence, the person against whom the offence has been committed is the judge. The prosecutor is the judge in this case. That is one thing. I think in the whole of our Jurisprudence you will not find any other case where the prosecutor is allowed to be the judge. Here, of course, we all take it that the High Court Judges are supermen. We would allow them that concession of judging their own case. But I do not think that Sir David Devadoss has properly grasped what was passing through our minds. As a matter of fact, speaking for myself, I was under no delusion whatsoever or under any mistake he thought I had committed.

THE HONOURABLE MR. P. N. SAPRU : Sir, the Honourable Sir David Devadoss says that a man can purge his contempt by apologising. Undoubtedly that is so. But why should you use your power to punish a man to force an apology? Has an apology, which is a forced apology, any value? An apology, in order to be a real apology, must be a genuine apology.

THE HONOURABLE THE PRESIDENT : You do not mean to say that *locus penitentiae* occurs at no stage?

THE HONOURABLE MR. P. N. SAPRU : Well, Sir, if I do not apologise for 3 months or 4 months and if I apologise at the end of 4 months, the presumption is that I am apologising because I have to spend two more months in jail. It does not indicate that I am convinced that I did anything wrong. So, an apology which is to have a value must be a genuine apology

THE HONOURABLE MR. BIJAY KUMAR BASU : Spontaneous apology.

THE HONOURABLE MR. P. N. SAPRU : and I do not want a forced apology just in order to maintain the dignity of the court. It is not enhancing the dignity of the court by forcing an apology. Well, Sir, reference was made by the Honourable Sir David Devadoss to a case in our Court—Allahabad. I happen to know all the facts of that case and I can supply those facts but it might perhaps not be relevant if I were to supply them at this stage. But there are just one or two things that I want to say in regard to that case. A certain article appeared in the "Leader" and that article was in regard to the Bar Council elections. No editor could have thought that in an article on Bar Council elections there would be any sentence which the court would regard as contemptuous of the court. Well, the article was allowed to go in into the "Leader" and then there was a prosecution of the "Leader". The line taken by the "Leader" was that the article did not amount to contempt and that line was rejected by the court. The Court—I think Mr. Justice Harris and Mr. Justice Tom were the Judges—held that there was really no intention on the part of the "Leader" to commit contempt. They accepted the statement of the editor that there was no intention on his part to commit any contempt. But on the technical question whether the article amounted to contempt or not, they came to the conclusion that the article amounted to contempt. Now, the "Leader" took the line that they wanted to appeal to the Privy Council. They thought that a question of public importance from the point of view of Indian journalists was involved. Though there was no intention to commit any contempt on their part, they just wanted to exercise their right of appeal to the Privy Council, and they went to the Privy Council. The Privy Council said that they were not prepared to interfere in the case because they were not a court of criminal appeal, and it would not be proper for them to interfere in that particular case. But if you read the arguments that were advanced in the case in the Privy Council and the observations of certain learned members of the Privy Council, you will find that the Privy Council was not satisfied that the decision of the High Court was really correct. If they were dealing with the matter as a Court of original jurisdiction or as an appellate Court they might have taken a different view. Lord Blanesburgh made certain observations which very clearly indicate that he at all events did not think that the words amounted to contempt. They did not interfere because of their well-known practice

not to interfere in such class of cases. In those circumstances there could be no question of an apology on the part of the "Leader". There is a subsequent High Court history in regard to that paper and it is not to the credit of the High Court. I have felt constrained to make these observations because of the remarks of Sir David Devadoss.

THE HONOURABLE MR. A. DEC. WILLIAMS: I would only wish to say, Sir, that the point for decision now surely is much more whether the intention of 1926 should be given effect to than whether that intention was right or wrong. The scope of this Bill is very limited; and I had not expected that Honourable Members would range over the whole field of contempts and discuss them on the merits. I am well aware that the Statement of Objects and Reasons of the Bill of 1926 and the proceedings in the Legislative Assembly and in this Council of 1926 are not available for the interpretation of the Statute, but they are available, and they should be referred to, for ascertaining the intentions of the Legislature. I do submit, Sir, that that intention should not now be changed and that all that this Bill does is to give effect to that intention.

THE HONOURABLE THE PRESIDENT: The Motion is:

"That the Bill to amend the Contempt of Courts Act, 1926, for a certain purpose, as passed by the Legislative Assembly, be passed".

The Motion was adopted.

RESOLUTION *RE* ROAD DEVELOPMENT FUND.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary): Sir, before I commence my speech, I would invite your attention to clause (b) of sub-order (I) of Order 60 of the Standing Orders. It says that a Member moving a Resolution "shall commence his speech by a formal motion in the terms appearing on the list of business." As I read that Standing Order, it necessitates my inflicting on the House the reading of this very long Resolution, copies of which are in the hands of every Honourable Member. I beg to submit for your consideration whether on this occasion, if there is no objection, this Standing Order might be suspended and I may move my Resolution in more formal terms.

THE HONOURABLE THE PRESIDENT: The usual practice is that before a Motion is adopted, it must be read in the House. But I understand that copies of this Motion, which is now about to be proposed, have been supplied to Honourable Members and unless any Honourable Member objects to my suspending the Standing Order and granting the request of the Honourable Mr. Clow, I am myself inclined to agree to his proposal. Has any Honourable Member any objection? (*Honourable Members:* "No.") Then you have the permission of the Council.

THE HONOURABLE MR. A. G. CLOW: I thank you, Sir. Sir, I move:
"That the Resolution* standing in my name be adopted".

In dealing with it I propose first to refer very briefly to the origin and the evolution of the Road Account and then to give some indication of the manner in which we have discharged the mandate that was entrusted to us in this Council 3 years ago and finally to deal with certain variations between this Resolution and its predecessor.

* For the Resolution—See Appendix at the end of these Proceedings.

[Mr. A. G. Clow.]

The Road Fund actually traces its ancestry to a Resolution moved in this Council. That Resolution was adopted in February 1927 and it recommended the appointment of a Committee including Members of both Houses of the Central Legislature to examine the desirability of developing the road system of India, the means by which such development could most suitably be financed and to consider the formation of a Central Road Board for the purpose of advising in regard to and co-ordinating the policy in respect of road development in India. In pursuance of that Resolution a strong Committee of Members of the Central Legislature was appointed. That is the Committee formally known as the Road Development Committee and sometimes alluded to as the Jayakar Committee, from the name of its distinguished Chairman. That Committee after about a year's deliberations reported in September 1928. It recommended the development of the road system in India and it came to the conclusion that that system could legitimately be developed by means of additional Central taxation, and it proposed an enhancement of the duty on petrol for that purpose. It recommended that the future policy should be controlled by the Legislature in two directions: first, by getting the approval of the Legislature to the general principles—and that is what I am seeking to do in a revised form,—and secondly, through a Standing Committee which would approve schemes and would advise Government generally. It contemplated that grants would be made to each province up to the amount apportioned for each year to be expended on projects so approved.

Then, after consultation with Local Governments and after securing the sanction of the Secretary of State, to expend from Central revenues on what was in every province but one a provincial transferred subject. The scheme advocated by the Committee was generally adopted. Extra taxation was imposed. The Standing Committee was set up. Grants were made to the provinces and the development of our road system has gone on with increasing vigour ever since. I might however point out at this stage that, instead of giving grants in accordance with approved schemes, which was I think the scheme the Jayakar Committee contemplated, the system adopted was that of handing over to the provinces the total amount due from time to time but not allowing provinces to spend the money until the schemes had been approved. Now, the system was on a five years' basis in the first instance, and I might just give the House one or two figures of the position as it stood about the time the last Resolution was adopted, that is, at the end of the first five years' period. At that time, at the end of the financial year 1933-34, there had been credited to the Road Fund 523 lakhs. Ignoring a small sum which went for the purposes of aviation, 59 lakhs went to the States, 15 lakhs to the minor administrations and administered areas, and 388 lakhs to the provinces; and out of that money allotted to the provinces the unspent balances at the end of the period were 132 lakhs. 60 lakhs had been credited during that period to the Government of India's reserve, out of which 41 lakhs had been allotted to approved schemes.

I now turn to the present position. In round figures the total sums which have been or will have been taken into account in the Road Fund in the three financial years 1934 to 1937, including a windfall we got of 40 lakhs in the budget of two years ago, will amount to 362 lakhs. That makes the total sums credited or to be credited to the Road Fund, in the eight years since the fund was opened, 885 lakhs. Out of that, 4 lakhs will have gone to aviation, 37 lakhs to the States, 22 lakhs to minor administrations and administered areas, 13 lakhs are temporarily unallotted, 148 lakhs go to the Government

of India reserve and 610 lakhs have been or will be allocated to Provincial Governments. Now, out of this 610 lakhs we estimate that about 360 lakhs will have been spent by the end of this financial year. That leaves an unspent amount of about 2½ crores. Of this, however, about half a crore will represent an allocation on account of revenue for the current year, and that falls to be adjusted next year. As regards the reserve, our estimate is that out of 148 lakhs credited to it, at the end of this year about 118 lakhs will have been spent, leaving a balance of about 30 lakhs, and we think it likely that that will be reduced to about 7 lakhs by the end of the next financial year.

These I am afraid are very dry figures, but I would like the House to make a little effort of imagination and try and translate them into human terms, because they represent a very big work that has had its repercussions throughout India. It means that all over India there are better communications than there were three years and eight years ago. All over India thousands of men, as we sit here, are going about those roads carrying on their trade or pursuing their lawful avocations and I think finding life a little easier and perhaps a little more prosperous in consequence. And the benefits are not merely to be measured in economic terms. There are cultural benefits that pass all our calculations, for roads like railways carry not only men but ideas, and I believe that the development of this network of roads is playing an important part in linking together the various parts of India and in helping to create and bind up the new India that we hope to see.

I would have liked to have gone into details and tried to describe the various works that have been carried out; but that would be a very difficult and very tedious task, even if I had the time. The work has been scrutinised in the Standing Advisory Committee with great care and thoroughness. Those Members who have served on that Committee will be fully familiar with that. But most of it has not gone in works of spectacular interest. It has gone on small improvements scattered over a wide area; metalling of parts of unmetalled roads; transforming roads already metalled for the older type of traffic into re-conditioned roads capable of bearing the strain of modern transport; bridging streams that formerly had to be forded or were crossed at certain seasons of the year only by temporary bridges. There must be few Members of this House who in their own constituencies or districts have not had some experience of what has been done in this direction.

I might however try to give some indication of what has been done with the Government of India reserve, asking Honourable Members to bear in mind that that gets 15 per cent. of the total fund, that is, only about one-seventh of the total. Now, from that reserve we have completed a large number of through communications. For example, the through road from Lahore to Ajmer has been virtually completed by metalling several lengths and constructing two important bridges. Then a grant to the United Provinces for the road from Allahabad to Rewa is connecting up the great Deccan road from Nagpur and Jubbulpur with the Grand Trunk Road at Allahabad. Then there is the completion of the metalled road from here to Jaipur; there is another one from Bhopal to Saugor; there is another one from Bagh to Ambua which will connect the Central Indian road system with the system from Bombay Presidency at Dohad. Then the Purna river is being bridged in Khandesh and that, with work in the Central Provinces, will give a good connection between Dhulia and Nagpur going by Amraoti.

We have also given grants from the reserve in furtherance of provincial programmes. For example, Orissa—a province very badly in need of road communications—have received about 13 lakhs to enable them to develop their road system. About 10 lakhs have

12 Noon.

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gone to Sind where there is likely to be in the future considerable need of the development of the system and where a scheme was worked out by an officer appointed by the Government of India some years ago. We have given 10 lakhs to Bengal for a road in the north of the province. We have given 30 lakhs to Assam which will enable the Assam Government to carry out a large number of improvements and particularly to construct a road from Shillong to Sylhet and to bridge the Surma river at Sylhet. Those who are familiar with Assam will realise that this is a vital communication between two separate valleys that constitute that province.

Now I come to the points on which this Resolution differs from the Resolution that was passed in this House three years ago. There are a considerable number of minor alterations and alterations of a verbal character and some other alterations which I do not propose to discuss in detail. For example, a paragraph relating to Burma has disappeared and there are changes in the paragraph relating to the constitution of the Standing Committee, which are changes more of form than of substance. But there are three changes of some importance to which the House will expect me to refer. These relate, first, to the purposes on which the money can be spent, secondly, to the time at which the money is to be distributed, and, thirdly, to the possibility of resumption of money that has been allocated. Honourable Members will find the purposes on which the money can be spent in paragraph 7 of the Resolution. Here there has been a slight enlargement. Thus clauses (iv) and (v) of the paragraph are new. On the other hand an alteration has been made which has the effect of limiting the use of the Road Fund for meeting the interest and amortization of loans to loans which have been approved prior to the passing of this Resolution. The objections to using the fund for meeting charges on loans are fairly obvious. The amounts that a province gets from this Fund depend on the moneys voted by the Central Legislature, and the Central Government of the future will have to have full liberty of action in respect of that Fund. I know that it is quite possible to argue that a province might be allowed to raise a loan to meet the demands on it from the Road Fund so long as that Fund exists and, if the Fund ceases to exist or is curtailed, then it can come from provincial revenues. But the fact is that the withdrawal or even any substantial reduction in the amounts credited from the Road Fund would have the result of throwing charges hitherto met from that Fund directly on provincial revenues, and the Central Government would inevitably be faced with a serious dilemma if it came to the conclusion that the sums it will give or was giving were no longer appropriate or could no longer be afforded. It would either have to continue payments which it no longer wanted to make or it would have to create serious financial embarrassment in the provinces, and the effect, whatever it may be in theory, in practice would be to curtail the liberty of action at the centre.

Now, in the second place, whereas under the preceding Resolution the procedure was to allot the money to the provinces as it came in, that is, in instalments, whether the provinces had any immediate need for it or not, what is now proposed is that the money should be retained by the Governor General in Council until it is actually required. This represents in my opinion a closer approximation than the existing system to what was contemplated by the Road Development Committee. That Committee after referring to apportionment to the provinces and to allotment to the Government of India—I would like the House to note that distinction—went on to say that “grants should then be made to each province up to the amounts so apportioned to it in each year for expenditure on projects approved by the Governor General

in Council with the advice of the Standing Committee." My amendment contemplates that the grant should be made according to the projects approved and up to the limits apportioned.

The third and last change to which I wish to refer is that represented by clauses (3) and (4) of paragraph 3 of the Resolution. These relate to the possibility of resumption of moneys by the Government of India and provide for the redistribution of those sums in the manner specified. So far as resumption may be based on failure to utilise the sums, here again I think I can claim some support from the Jayakar Committee's Report. Referring to that Report, I find that they said that under the system adopted by the United States of America, on which they had to a considerable extent based their recommendation, sums unexpended at the end of a fiscal year remained in the hands of the States for one further year, after which they were re-apportioned among all the States. And the terms of their actual recommendation were that "if any part of the amount apportioned to a province remains unexpended at the end of the financial year it should be carried over for expenditure in the province in the following year". Now, I recognise that those words are capable of more than one interpretation, but they at least suggest to my mind that the Committee did not contemplate an indefinite carry over, which would have involved, or rather would have represented, a retardation of the programme of development. But we are not proposing to follow the United States of America, if they have that system still there, in having a rigid provision for the resumption of moneys which have not been spent. On the contrary, the provision we are inserting here is intended as a measure only to be used in special cases and I trust that it will seldom or never require to be used. I might add that in the Standing Committee attention has been drawn on several occasions to the unspent balances and the Government of India have been urged by certain provinces to make a more rapid progress.

But the House will observe that it is proposed also to make resumption possible where a province has "failed to take such steps as the Governor-General in Council may recommend for the regulation and control of motor vehicles within the province". Now, that proposal arises from a Resolution adopted by the Road-Rail Conference which I would like to read to the House. It runs as follows :

"In order to ensure increased co-operation and more intelligent co-ordination of effort between the various authorities concerned, this Conference considers that the following measures would be justifiable—

- (a) the control of public service and goods motor transport should be regulated in the interests of public safety and convenience ;
- (b) the number of vehicles licensed to ply for hire should be restricted so as to prevent such competition between all forms of transport as may be contrary to the public interest."

Now, the same principles were affirmed in the statement of policy adopted at both meetings so far held of the Transport Advisory Council. One of those meetings was held last summer, and the conclusions in both cases were clearly aimed at ensuring proper control of road transport and at a proper co-ordination of road transport with other forms of transport, and particularly transport by rail.

Well, Sir, I hope I have said enough to justify me in asking the House to adopt this Resolution and I would add only one observation in conclusion. I think there is a tendency in some quarters in discussing questions such as that before us to concentrate on certain controversial points which are really

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only of secondary importance, such as the road-rail controversy. I do not propose to discuss the merits of that admittedly controversial question myself, but I would ask the House, as I am sure it will, to keep a sense of perspective in this matter. Any controversies there may be about roads and railways after all affect only the minor portion of the field. Over the great part of the field there is and can be no controversy. I recognise that there is always a danger of conflict where big interests come into play—but I think there is a danger that the dust of that conflict may rather obscure the great work which is going on over the bulk of the field, where works are being carried out constantly without any question arising as to their beneficial effects on the peoples of India. (Applause).

THE HONOURABLE THE PRESIDENT: Before I put the Resolution to the House I want myself some explanation from the Honourable Member. In clause 9 the constitution of the Standing Committee has been provided and sub-clause (c) says "three members elected by the Members of the Council of State from amongst themselves", and (d) "six members elected by the Members of the Legislative Assembly from amongst themselves". Then later on, in sub-clause (3) it is stated :

"No approval to any proposal for expenditure from the Road Fund shall be given by the Committee unless it is supported by—

- (i) a majority of the members present and voting who are Members of the Legislative Assembly, and
- (ii) a majority of the members of the whole Committee present and voting."

I can quite understand sub-clause (ii), but why has a special privilege been given under sub-clause (i) to the Legislative Assembly? Is the vote of the Council Members not so important as that of the Members of the Legislative Assembly and why has this privileged discrimination been made in favour of the Members of the Assembly?

THE HONOURABLE MR. A. G. CLOW: I would like to explain, Sir, that both the clauses which you have read are taken verbatim from the preceding Resolution. The only change, I think, is the substitution of the word "Fund" for "Account". Actually this arises out of the greater responsibility for expenditure given to the other House. The original proposal—I am speaking from memory—of the Jayakar Committee was that there should be a financial sub-committee and that the proposals were to be voted by the financial sub-committee and then voted by the Committee as a whole. But that was found to be rather a useless formality. There was a discussion and they decided in favour of this simpler system, which is a system that has been in force for the last three years and is in consonance with the constitutional position. I need hardly assure you, Sir, that I do not attach more importance in any matter to the vote of the other House than I do to the vote of this House.

THE HONOURABLE THE PRESIDENT: You have revised the previous Resolution altogether and when doing so, apart from other considerations in view of the fact that even under the Government of India Act, 1935, co-equal powers are being given to the two Houses, I think Government ought to have taken into consideration that nothing affecting the dignity of the Members of the Council of State was imported into this Resolution. I am sorry this has happened but I hope this invidious distinction will be corrected at an early date.

I think it will be conducive to the debate if I allow Mr. Parker's amendment to be moved at this stage so that both the Resolution and the amendment can be debated together.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce) : Sir, I move :

"That to sub-paragraph (3) of paragraph 3 of the Resolution the following proviso be added, namely :—

'Provided that the Governor General in Council shall give a Local Government six months' notice of his intention to resume any such sum before doing so.'

Sir, in moving this amendment that stands in my name I wish to make it clear that I do so because the circumstances are of an exceptional nature. In the first place, the Governor General in Council, who under the Resolution will in certain circumstances be entitled to resume funds which would normally be available for a particular province to spend, and who under the Resolution would be the sole judge of whether such sums ought to be resumed by him or not, is at the same time the Head Executive of the Railways. It has been made very plain by what has been said by the Honourable the Finance Member and the Honourable the Railway Member that they have very strong views as to how far competition of road transport should be allowed to interfere with railway revenues, and there is therefore justification for the fear that does exist in the provinces that the interests of road users—and indeed the interests of road users are to a large extent the interests of the nation—may be crippled by injudicious endeavours to protect railway revenues. Normally one would not approve of an interested party (as the Governor General in Council must be in this case) being at the same time the final judge.

The actual amendment which I have moved is an improvement on the Resolution only in this way, that it provides a period of time during which it will be possible for both points of view to be ventilated : more particularly these points of view can be ventilated in the Central Legislature and in the Provincial Legislature concerned. Now it might be that neither party would change its view as the result of such ventilation but I think we are all agreed that in many instances it is a real safeguard against arbitrary action being taken to provide that that action must be delayed and can only be taken after a substantial period of notice has been given. The mere fact that the matter can and will be discussed in public by the parties concerned tends to arbitrary action being avoided and the discussions which take place may in themselves elucidate the position sufficiently to assist in reaching the best conclusion in the circumstances of a particular case.

It is, I think, not the least of the duties of this Honourable House to endeavour to do all it can to assist in the smooth working of the relationships between the Centre and the Provinces upon which the future of India depends to such a very large extent.

I hope that the Government will accept this amendment and that it will receive the support of all Members of this Honourable House.

***THE HONOURABLE MR. HOSSAIN IMAM** (Bihar and Orissa : Muhammadan) : Mr. President, the Resolution which the Honourable Mr. Clow has just moved would in the ordinary course of business have been opposed by some of us inasmuch as it materially interferes with the autonomy of the provinces and had there not been special circumstances we, Sir, would not have been a party to the interference of the Centre in matters that are not

* Speech not corrected by the Honourable Member.

[Mr. Hossain Imam.]

only provincial but transferred subjects. But our experience during the last few years has been that the Provincial Governments are in the habit of not spending all the allocation from this Fund, and what is more, they want to utilise this Fund to relieve their own budget of certain items of expenditure which would have fallen on the provincial revenues.

(At this stage the Honourable the President vacated the Chair which was taken by the Honourable Sir David Devadoss.)

During the short period that I was on the Road Committee, some instances came to my knowledge in which some of the Provincial Governments were anxious to utilise this Fund for the maintenance of the roads which they formerly used to maintain from the provincial revenues. There were also some provinces which had accumulated large sums of money from this Fund. When this Resolution was moved in 1934, 100 lakhs were unspent and 55 lakhs were taken as loan by the Provincial Governments from the Road Fund. This is not a proper use to which the Road Fund should have been put. It is to the good of the provinces that there should be a central body which would control them, and will make them spend the money on its proper object. The Resolution, as amended by Mr. Parker, would make quite a good check and so I for one am in support of the Resolution. But there is one objection which was taken in the other place, namely, to allowing this Fund to be used for repayment and security for road development loans. This makes it appear that the intentions of Government are not clear, and that they are still contemplating the resumption at some future date of this, if and when the federal burden is thrown on us. I must enter my emphatic protest against this intention. The Fund has been created for a special purpose. The Legislature and we as representatives of the people have allowed taxation to be imposed on ourselves for a definite purpose, and this should remain earmarked for this purpose alone. It should not be open to the Governor General or the Finance Member at a later stage to resume this Fund by executive action and the extensive powers given under the Government of India Act of 1935. On this condition I support the Resolution.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern Non-Muhammadian): Sir, I am in general agreement with the Resolution which has been moved by the Honourable Mr. Clow. As I understand the position, the tax is a Central tax, and the proceeds of the tax go to the provinces. We act as agency for the levy and collection of the tax. The tax is for the purpose of road development. As the Centre is responsible for the levy and collection of the tax, the Centre ought to have a certain measure of control over the manner in which the Fund is used by the provinces. We are all great advocates of provincial autonomy. We also wish very rapid developments in the provinces. But we cannot forget that the tax is a Central tax and you cannot choose and use the machinery of the Central Legislature without giving to the Central executive and the Central Legislature a certain measure of control. Therefore, Sir, the principle of Mr. Clow's Resolution is sound and has our general support. If the provinces want to have rapid road development, they can have separate taxes. But the Centre is interested in seeing that there is no unhealthy competition between railways and roads.

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

I do not say that we, on this side of the House, approve of the particular measures which are under contemplation for checking the competition between railways and roads. Probably, our views on the subject are different from those which commend themselves to my Honourable friend, the Chief Commissioner of Railways. But the principle is sound. Besides, there are a number of safeguards provided here. Clause 9 says that there shall be a Standing Committee on which both the Houses will be adequately represented. Then there is clause 9 (3)—to which I have no objection, because I am always a supporter of popular Chambers—which says :

“ No approval to any proposal for expenditure from the Road Fund shall be given by the Committee unless it is supported by—

(i) a majority of the members present and voting who are Members of the Legislative Assembly, and

(ii) a majority of the members of the whole Committee present and voting.”

There are these safeguards.

So far as the amendment of the Honourable Mr. Parker is concerned, I think it is a very reasonable amendment, and I give my cordial support to it. There ought to be some notice given to the provinces. I think that is the real object of the amendment. He wants to give six months' notice under this clause to the provinces. I think that Mr. Parker's amendment will improve the Resolution and I hope that the amendment will be accepted by Government. With these remarks, Sir, I give my general support to the Resolution that has been proposed by the Honourable Mr. Clow and I also give my wholehearted support to the amendment which has been proposed by the Honourable Mr. Parker.

THE HONOURABLE THE PRESIDENT : As today is Friday and as I understand that Muhammadan Members would like to retire early from this House for the purpose of offering their prayers, I will give preference to Muhammadan Members if they rise first.

(The Honourable Rai Bahadur Lala Ram Saran Das then rose to speak.)

THE HONOURABLE THE PRESIDENT : You are not a Muhammadan Member.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Mohammadan) : As no Muslim Member has risen, I rose.

THE HONOURABLE THE PRESIDENT : You are not giving them enough time.

(After waiting for a few seconds)

As no Muhammadan Member has risen, you can address the House.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Very well, Sir.

Sir, the subject matter of the Resolution has been discussed at such a length in the public and in another House that there is no aspect of the issues raised by it which has not been written or spoken upon. If, therefore, I take a little time of this Honourable House it is because I feel it my duty to voice the emphatic protest of my province, the Punjab.

Our province claims to possess one of the finest systems of roads in any part of India and the keen interest which His Excellency Sir Herbert Emerson

[Lala Ram Saran Das.]

takes in the matter is known to every Punjabee. The feeling both among the Government and the public of my province is that they would rather give up their share of this Fund than subject themselves to the humiliation which the terms of the Resolution involve. Sir, I have the privilege of being the President of the Indian Roads and Transport Development Association, Limited (Punjab Branch), and so, I have some practical knowledge as to how the new construction of roads is controlled by the railways. From the Annual Report which this Association is issuing for the last year (1936) I might quote an extract, which will prove how the railways are interfering in the construction and development of certain roads :

“ At the second meeting held on 26th September 1936 the Board approved of the Punjab road developmet programme drawn up by Mr. Stubbs. This programme.....”

THE HONOURABLE THE PRESIDENT : Mr. Clow asked you not to enter into that controversy. We are not concerned with that matter now so far as this Resolution is concerned.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I might explain, Sir, that as these matters are so inter-woven with each other, a reference to it cannot be avoided. I am simply saying that the Government of India should not withhold the funds allotted from any province. The extract I am giving proves the Railway control.

THE HONOURABLE THE PRESIDENT : All right. Please refer to that subject as little as possible.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Very well, Sir.

“ This programme, which allows for a total expenditure of 131.6 lakhs, excluding works in progress and is to be financed entirely from the Road Fund, was discussed between the representatives of the North Western Railway and the Punjab Public Works Department, with the following result. Proposals agreed to 63.14 lakhs ; proposals agreed to conditionally 25.87 lakhs ; proposals not agreed to 49.59 lakhs ; total 131.60 lakhs.....”

THE HONOURABLE MR. A. G. CLOW : Might I ask the Honourable Member what he is reading from ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I am quoting from the Annual Report of the Association to which I have referred, the Indian Roads and Transport Development Association, Limited, Punjab Branch.

“ It is a matter for satisfaction that works estimated to cost 63.14 lakhs have been approved, and it is not improbable that the North Western Railway will be persuaded gradually to withdraw their objections to many of the remaining projects included in the programme.”

I dare say my Honourable Colleagues are acquainted with the history of the Road Fund. The idea of Petrol Road Fund tax emanated from the Indian Roads and Transport Development Association in Bombay and was first put forward by the Bombay Government to the Central Government. Public opinion was then sounded and the motoring public endorsed the suggestion. It was made clear that the Central Government was chosen merely as a convenient authority for the purpose of collaboration and that the sole work of the Central Government would be to see that the money collected was distributed on the lines laid down which were agreed upon by all the

Provinces. The Resolution before this Honourable House proceeds on the assumption that the Government of India have a sole legal right to its distribution. Sir, whatever the legality of the position, I make bold to say that the Central Government have no moral right over the Fund.

What the Resolution amounts to is that the Government can utilise it for the protection of railway revenues at the expense of the Bus Services. This fear is supported by the recent instance of the disposal of a scheme of road construction in the Punjab.

With your permission, Sir, I wish to bring home to Government the serious effect of their proposal on rural life and economy. The motor lorry traffic has opened up the rural areas and brought them within easy reach of each other in a manner as has meant to the countryside a greater revolution in life than either the introduction of the postal service or of any other instrument of popular benefit. These lorries traverse tracks which even bullock carts do not. The lorry service has been the best instrument for rural uplift by giving an outlet for skilled men in the rural areas, for increasing their earning. The capital in these enterprises has not been sunk by the money-lender but mostly by the village artisan or peasant. The proposal of the Government will mean a serious handicap to the maintenance of these services in the rural areas, and I can think of no greater harm to the rural area than the adoption of any retrograde proposal of this kind. I am all for devices for safety but the basic economic fact must not be ignored. If the lorries which carry passengers and goods are separated then economic basis will be further destroyed. Have not Railways been carrying for decades mixed goods and passenger trains? Why is then a handicap to be placed on the lorry traffic?

It has been argued that the national interests demand the Railway system in which 800 crores of rupees are sunk should be safeguarded. I entirely agree with that proposition but the way to safeguard railways is by reducing their expenses. This can be done by changing the policy relating to purchase of stores and by reducing the working expenses in respect of salaries and allowances of the superior staff.

What I wish the Government to remember is that the railway system, because of its heavy outlay, does not provide economic basis for development of transport facilities and this is proved by the fact that the Railway authorities have not, during the past six years, launched on any programme of capital expenditure in adding to their mileage even though they had the cheapest money rates that have ever prevailed in the money market.

It is thus clear that the railways are not able to play an important role in future development and for their sake we should not stand in way of the opening up of the countryside and linking markets to the remotest corners of the country. Road development alone offers this prospect. But can such a development take place when we have a number of serious handicaps which are being proposed?

In particular I feel that road service permits should be issued as a matter of formality and should not be exposed to objections from outside bodies such as Railways. Secondly, though the authorities should have power to fix maximum rates we cannot allow them to fix the minimum rates which might tend to assist Railways to return to their monopolistic state. Thirdly, there should be no prohibition or restriction regarding picking up and setting down passengers and goods. Fourthly, public vehicles should not be restricted to specific routes but the law of supply and demand should be allowed to have a free play.

[Lala Ram Saran Das.]

I would like the Government to appreciate the problem from yet another angle. They have in the private lorry driver a potential reserve of skilled men for times of emergency and they have in private lorries a mobile instrument for use in times of commotions. These lorries have penetrated the countryside, have tended to raise the price of primary produce and have brought it into real touch with the district and tehsil headquarters. The Resolution if carried out in its spirit will hamper development of road transport which alone offers the most economical solution of the rural economy of transport. Finally, I would request the Honourable Mover of the Resolution to remember that it is not a good augury for future relationship between the Central Government and autonomous Provinces that the very first act of the Central Government on the eve of the introduction of the new constitution should exemplify the type of stepmotherly treatment that may be expected hereafter. The Government of India got the Resolution passed in another place when the Opposition Block was absent. I am doubtful if the Government would have carried the Resolution, had the other place been its usual self. However, the duty now falls on us to leave the Government in no doubt with regard to what we believe is fair play between the Centre and the Provinces. With these remarks, Sir, I oppose the Resolution.

(The Honourable Mr. R. H. Parker rose in his place.)

THE HONOURABLE THE PRESIDENT (to the Honourable Mr. R. H. Parker): Have you not spoken on the Resolution?

THE HONOURABLE MR. R. H. PARKER: No, Sir. I spoke on the amendment.

THE HONOURABLE THE PRESIDENT: My instructions were that the debate should proceed simultaneously on the Resolution and amendment. As you did not understand I will allow you.

THE HONOURABLE MR. R. H. PARKER: I have only a little to add, Sir.

In my opinion the Standing Committee for Roads ought to have placed before them all the proposals which come from the Provinces for consideration. I understand that the procedure now is for proposals in respect of roads, road programmes and matters of that kind to be referred to the Railways first and when the Railways have combed them, for the remainder (*i.e.*, in practice mainly only those to which the Railways raise no objection) to be placed before the Standing Committee. I think this is quite mistaken. The views of those who advocate the proposals in connection with the roads and the views of the Railways should both be brought before the Standing Committee for Roads, and I hope the Government will intimate in reply that they will follow this course in future.

I also think that all communications between Local Governments and the Central Government relating to road affairs should be placed before the Provincial Boards of Communications. I believe this is customary in some Provinces but not in others. I hope that Government will suggest to all Local Governments that they follow this course so that the respective Boards of Communications may be more fully informed.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I regret that I cannot join in the general amount of

support that the Resolution has received from the Members in this House, with the notable exception of my Honourable friend Lala Ram Saran Das. I am not in agreement with those who spoke in support of the Resolution. I do not wish to go into the details of the various clauses. If we agree to the principle of the Resolution, probably the clauses are not very objectionable. But I am wholly opposed to the underlying principle of this Resolution, and that for two main reasons. First of all, Sir, the tax is one which is derived in areas where these motor vehicles ply, and they are the provinces. It is pooled here, mainly for one purpose, namely, of making a contribution to civil aviation, the rest being again distributed to provinces. Now, in the normal course the provinces would like that the contribution that they are required to make for the Central Government should be made by themselves after receiving their own quotas for their own areas. I think each province would lay claim to the revenue derived from this source of taxation to itself and would like to make the contribution to the Centre, instead of the centre Collecting the whole thing and making grants. I think on that there is bound to be a clash between the future provinces and the future Central Government. I think this is a most inopportune time to have brought this Resolution at all in this House and in the other House. Whatever may be said about the way in which the Road Fund was administered under the old system when the Provincial Governments were not autonomous and more or less autocratic and not responsible to the Legislatures, we are on the eve of a very momentous change in the constitution when the Provincial Governments will be autonomous and responsible to the Legislatures. So the future Ministers in the provinces will have ample guidance from their own Legislatures which are now elected on a much wider franchise and therefore I think the action taken by the Government of India in bringing this Resolution now and claiming new powers to the Centre in distributing the Fund among the provinces is a most unwise step and nobody who wants that provincial autonomy should be a success in future can really support this Resolution. Sir, in the other House even the Members of the European Group were opposed to this Resolution. Mr. Morgan very significantly said: "Seven years after the Fund has been in existence"

THE HONOURABLE THE PRESIDENT: Order, order. You are quoting from this year's speech, which you cannot do.

THE HONOURABLE MR. V. RAMADAS PANTULU: The other day when the Resolution was moved in the other House.....

THE HONOURABLE THE PRESIDENT: But you cannot use it.

THE HONOURABLE MR. V. RAMADAS PANTULU: Then I will only say in my own words what he stated; that after seven years of working of this Road Fund to now subject the provinces to the dictation of the Government and asking Provincial Governments to comply with the instructions of the Central Government in regard to the road schemes is not right. That is the objection which was seriously pressed and I whole-heartedly support that view of the matter. The danger of the Central Government interfering with Provincial Governments is not imaginary or unreal. Centrally administered subjects here, like Railways, have their own claims and the claims of trunk roads also conflict to some extent with the claims of the rural communications. We in the Centre here, whether officials or non-officials, sometimes develop an all-India mentality, which does not always coincide with provincial or rural interests. Speaking for myself I think I am on a somewhat different plane

[Mr. V. Ramadas Pantulu.]

when I am sitting here in this Legislature than I would myself be if I were sitting in the Provincial Legislature. It is inevitable that we should place more emphasis on a particular aspect of the question viewed from an all-India point of view or a provincial point of view according to the atmosphere in which we deliberate. Therefore I think there is a great danger of the centrally administered subject of Railways claiming greater attention on the part of the Government to the detriment of the provincially administered subjects. Roads and transport of motor vehicles are both Provincial Subjects, which will be within the full competence of the Provincial Legislature and the Provincial Executive to deal with. I think there is a great danger of rural communications suffering and the claims of provinces being overlooked. The Resolution gives large powers to the Central Government and I do not think that the safeguard of an advisory standing committee on roads, to form which we have agreed today and which is useful so far as it goes, is a sufficient safeguard to keep the Government of India within its bounds. My friend the Honourable Mr. Clow has asked us not to advert to side issues or controversial matters but to concentrate on the broad issues raised in the Resolution. Even on the broad issues, I have said that the Resolution offends against the susceptibilities of the provinces and provincial representatives, but at the same time we cannot accede to the wishes of Mr. Clow, for the reason that at the Road-Rail Conference recently held under the auspices of the Government of India great emphasis has been laid on the need to give prominence to the claims of the Railways and one clause of the Resolution passed by that Conference, which I wish to refer to, reads :

“ The number of motor vehicles licensed to ply for hire should be restricted so as to prevent such competition between all forms of transport as may be contrary to the public interest.”

The words “ public interest ” there are synonymous, I beg to submit, with the interests of the Railways, reading the Resolution as a whole in its context. Therefore the real danger of the Railways and the claims of trunk roads interfering with the needs of the provinces and rural communications is really grave. On the whole the principle is wrong. It is bound to bring the Central Government into conflict with Provincial Governments and it would interfere with the true autonomy of the provinces, where roads and motor transport are essentially Provincial Subjects. For this reason I oppose the Resolution because I am opposed to the principle of it.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, the subject with which this Resolution deals is a very difficult one. As several Honourable Members have pointed out, it relates to a matter in connection with which there may be a great deal of conflict between the interests of the Central Government and the provinces. But for that very reason it is necessary to bring about co-ordination between the Centre and the provinces. Again, the Road Fund was established in order to bring about a co-ordinate system of road development all over the country. The Central Government added to the taxation imposed on the country in order to provide funds for this purpose. I do not think, therefore, that in principle the establishment of a Committee of the kind suggested by the Honourable Mr. Clow in his Resolution can be objected to.

THE HONOURABLE MR. V. RAMADAS PANTULU : Nobody objects to the establishment of a Committee.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am glad to hear from my Honourable friend that he does not object to the establishment of a Committee of the kind proposed by Mr. Clow. I take it that he too in principle then is not opposed to the arrangement which Mr. Clow asks the House to accept. In regard to particular schemes placed before the Committee there may, it is true, be serious differences of opinion between provincial and Central Governments. This Committee, Sir, the establishment of which we are asked to approve, will have a considerable non-official majority on it. Six members will be elected by the Members of the Legislative Assembly and three by this House. These men I suppose will not be inhabitants of centrally administered areas but will come from areas under the jurisdiction of the autonomous provincial Governments. Now, why need we suppose that where there is a serious conflict between the provinces and the Central Government and the Government of India choose to exercise their powers of resuming the funds allocated to a province unjustly, the non-official members belonging to the autonomous provinces will tamely submit to the decision of the Government of India? I am sure, Sir, that those members will be the first to take up the cudgels on behalf of the provincial Governments and will take every step to see that the legitimate economic interests of the provinces are not hampered in any way by any selfish policy which the Government of India may desire to pursue.

Apart from this, Sir, I doubt whether the conflict of provincial and Central interests is as great as some Members have tried to make out. There is a great deal of competition at present between railways and vehicles plying on roads. But it has to be remembered that in the interests of the provinces themselves it is necessary in accordance with the proposals made in Sir Otto Niemeyer's report that the railways should begin to make a contribution to the general revenues. Our country must be treated as one indivisible entity from the economic point of view. Administratively it might be cut up into several parts but the economic interests of the people cannot be limited by the boundaries of the provinces to which they belong. If this is so, Sir, we must consider the interests of India as a whole. We must think of the revenues both of the Central and the provincial Governments and not merely of the Central Government or the provincial Governments. If we look at the question from this point of view, all that we are concerned with in the determination of the question of competition between motor vehicles and railways is the best method of bringing about the ultimate economic development of the country. Nobody can at present say on what lines future development will take place. If this were clear, much of the conflict which is now visible at present would disappear but during the period of transition it is obviously necessary that there should be some agency to harmonise the interests of the Centre and the provinces, particularly when their interests, though apparently different, are really common. And so far as the railways are concerned, I venture to draw the attention of the House once more to the fact that any improvement in railway revenues will not merely improve the financial position of the Central Government but will also add to the revenues which the provincial Governments will get from the Central Government.

It has been pointed out, Sir, by my Honourable friend, Mr. Ramadas Pantulu, that the tax is derived from the users of motor lorries which ply within provincial boundaries. That may be so, but is there any central tax which draws its revenues from any source other than the people living in the provinces? The centrally administered areas are very small and if the Central Government were asked to depend for their revenues entirely on areas under their direct control they would practically be left without any money at all.

[Pandit Hirday Nath Kunru.]

This moral principle is not followed anywhere. I do not think, therefore, that there is any force in the argument used by my Honourable friend Mr. Ramadas Pantulu. I am, Sir, as jealous of the rights of provinces as anyone can be. It is desirable that full scope should be given for the future development of provinces which depends on their ability to adopt schemes best suited to the interests of the people committed to their charge. But let us at the same time remember that this country is one and that it cannot be divided into a number of independent sections. If we ask for provincial autonomy it is in order that with the development of the interests of the various provinces there should come about a better sense of the essential unity that pervades this country. If, however, we use the autonomy of the provinces in order to have an emasculated Centre, then I am afraid that however strong the provinces may be, the country as a whole will have no reason to be thankful to the new system of provincial autonomy.

This should not be construed to mean, Sir, that I am in favour of the new constitutional arrangements. I am not a supporter of the Government of India Act of 1935. I am one of those who think that under the future system of Government we shall lose some of the rights which we now possess at the Centre. In particular, Sir, if I may refer to a point raised by you, I regard it as a misfortune that the right of voting grants, which is now enjoyed exclusively by the Lower House, will in future be accorded to this House also. But whatever my opposition to the system of Government which will be introduced into this country by the Government of India Act of 1935, I consider it necessary to say in connection with the Resolution before us that howsoever jealous we might be of provincial interests, it is desirable for us always to keep in view the necessity of having a strong Centre which will be able to control the interests of all the provinces and secure a fuller and happier life for the people of this country. Again, the money which will be placed at the disposal of the Road Committee will have been derived from a central source of taxation. It will be unreasonable on the part of any Member of this House to say that the Central Government should impose extra taxation and distribute the proceeds to the provinces even though the provinces may use that money in such a way as to promote their own exclusive interests at the expense of those of the Government of India. We have to devise some way of bringing about harmony between the interests of the Government of India and those of the Provincial Governments and I know of no better way of doing that than by having a Committee at the Centre which will give its careful consideration to all proposals for road development that might be brought forward. For these reasons, Sir, I give my support to the Resolution which has been placed before this House by my Honourable friend Mr. Clow.

THE HONOURABLE MR. A. G. CLOW : Sir, my first duty is to thank the House for the general support given to the Resolution. Thereafter I feel that I must just refer to the remarks that were made from the Chair. I am informed that the system of voting grants in this House will not come into operation in the transitional period but will operate only on the coming into force of Federation. If that is the case, I submit that the Resolution is correctly designed to meet the present circumstances and that we must leave to a future time the question of any revision that may be necessitated by a change in the constitution.

As regards the remarks that fell from my Honourable friend Mr. Ram Saran Das, I need not say much because I think these have been very adequately

met in the thoughtful speech to which we have just listened from the Honourable Pandit Kunzru. I think he did say, however—I am not sure I have got him right, but I think he said—that the whole object was that Government will utilise the fund for the protection of railway earnings. If that were the whole object of the Fund....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : May I explain, Sir, what my object was ?

THE HONOURABLE THE PRESIDENT : You cannot make a second speech. You can only explain your point.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Yes, Sir. My object was that the Government of India should not have the power to throw out the construction of such roads where bus services were likely to compete with Railways in traffic.

THE HONOURABLE MR. A. G. CLOW : In other words, that the Government of India should disburse the money without attaching any conditions to it.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Leave it to the provinces.

THE HONOURABLE MR. A. G. CLOW : If they wanted to protect their own railway revenues, the most obvious way would be not to create the Fund at all. But I ask the House if it is not reasonable that they should have powers to ensure that communications are provided not as a mere duplication of existing communications but that they should go as far as possible to the great areas where there are no communications worth the name, and that they should to a large extent assist the rural areas, for I think most Honourable Members will agree that communications between towns are a great deal better than those between the villages and the towns.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : May I put a question ? Suppose a Provincial Government wants to have a road which is not acceptable to the Government of India. Will it, under the new system, have the power to construct that road out of its own funds or not ?

THE HONOURABLE MR. A. G. CLOW : Yes, certainly. It has the power at present. There is no question of withdrawing it. It is open to a province to use its provincial revenue to construct a road exactly parallel to a railway

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I take it, then, that the effect of the new arrangement will only be to prevent that road being constructed out of the funds given by the Government of India.

THE HONOURABLE MR. A. G. CLOW : This is not a new arrangement. To a certain extent the Government of India have to see that the roads are for the areas where they are most needed and not simply duplication on a competitive basis with an existing railway line.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Do the Government of India mean that by getting the Resolution passed, they will be able to control the bus services and to fix certain minimum fares, thereby to ruin all the bus services ?

THE HONOURABLE MR. A. G. CLOW : There is no intention of ruining all the bus services at all. From what I know of bus services, they stand in need of improvement in many directions. I would refer to labour as one. They stand in need of a certain amount of control. But I think, if I may say so with great respect, the most confused speech of all was that of my Honourable friend, Mr. Ramadas Pantulu. For he seemed to think that the only reason why this money was collected at the Centre was in order that the Centre may give a very small amount of it—I think about $\frac{1}{2}$ per cent—to Aviation and that were it not for that, it would be a far better system to have it collected in the provinces. Well, as regards the argument that this money comes from the provinces, that has been adequately met by my Honourable friend Pandit Kunzru. All the money we have—our income-tax, etc.—comes from the provinces.

THE HONOURABLE MR. V. RAMADAS PANTULU : Roads and Transport by motor vehicles are not Central subjects.

THE HONOURABLE MR. A. G. CLOW : But the petrol tax is.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Just as customs revenue.

THE HONOURABLE MR. A. G. CLOW : Exactly. So is the petrol tax. My Honourable friend then talked of taking away from the provinces the powers of taxation. That is not the position at all. I am not asking for any powers of taxation in this Resolution. The power of taxation is not taken from the provinces by this Resolution or by the preceding Resolution. This is a central tax, as much a central tax as the income-tax. We derive it from a central source of revenue and we are making grants to the provinces. It is not a matter of convenience in taxation. It is a matter of giving from a source of Central revenue certain grants to the Provinces. I think that surely is the answer to the suggestion that there is interference with Provincial Autonomy, that this trenches in some mysterious way on provincial autonomy. We are here making grants from our own sources of revenue. Surely if the position were reversed and a province from its own provincial revenues offered a grant to the Government of India and said, "we shall attach the following conditions if you want this grant," no one would say that it was taking away from the autonomy of the Centre.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Don't you trust the Local Governments as regards the disposal of this fund ?

THE HONOURABLE MR. A. G. CLOW : There are obvious conflicting interests, and the question has to be viewed from the larger aspect of the Centre. We cannot, as I think Pandit Kunzru pointed out, allow an indefinite amount of provincial development without regard to the needs of India as a whole.

Then, Sir, Mr. Hossain Imam—I am sorry he is not here—suggested that the Government of India have designs of some kind on the Fund. Well, when I referred to the possibility of contributions to the Fund having to be withdrawn or reduced, I was not referring to contributions already made. What I was thinking of were contributions in future. Clearly the Federal Minister of the future must have authority in this matter. I am sure Honourable Members

opposite would be the very first to criticise if we at this stage in the constitutional progress were in some way to bind the Federal Ministry of the future to paying fixed sums into this Fund for an indefinite term of years.

Then I come in conclusion to my Honourable friend Mr. Parker. He sprang two requests on me, of which I am sorry I had not previous notice. One was that we should be prepared to give the Standing Committee particulars of schemes which the Government of India had not approved. Well, as I said, this is a new request and I am not in a position to give an undertaking on that point ; but I can say that the point will be examined as to whether information should be given. He also suggested that correspondence should be placed before Provincial Boards of Communication. I think that is really a matter largely for the provinces, but I understand we have urged on the provinces that they should employ these Boards of Communication as fully as they can.

And now I will turn to say a word on the amendment standing in the name of the Honourable Mr. Parker. I think he suggested that this amendment was designed to secure harmony between the Centre and the Provinces. Well, on the point of substance I have no difficulty whatever in giving him an assurance that provinces will have at least six months' notice if there is any question of resuming their allotment under the relevant clause of the Resolution. I would remind the House that the Standing Committee needs normally twice a year. All these proposals are to go to the Standing Committee and I am quite sure the Standing Committee will not be prepared to consider them until it has heard what the province had to say to the proposal made by the Government of India that money should be resumed. They would insist upon having before them both the Government of India's statement and the statement made by the province ; so that Honourable Members will realize that that secures a good deal more than Mr. Parker's amendment. I trust it will never be necessary to resume any funds. But if it is ever necessary I shall be very surprised if it can be done in any period as short as six months. But as regards the actual form of the amendment I trust he will not press it, because I think it will have the opposite effect to that which he desires. If they are bound to give a more or less formal notice, clearly the Government of India would have to safeguard themselves by issuing the notice in the first instance and conducting the argument later on. But the very issue of the notice would tend to make relations difficult, for it would tend to make Local Governments feel that something formal had been served on them and thus raise a controversy where a less direct approach by correspondence would in every case reach a harmonious end. I trust therefore he will not press this amendment.

THE HONOURABLE THE PRESIDENT : Do you wish to press your amendment ?

THE HONOURABLE MR. R. H. PARKER : No, Sir, provided it is clearly understood that this assurance means that the provinces will in fact be told six months before the resumption takes place after the final decision of Government to resume it has been made.

THE HONOURABLE MR. A. G. CLOW : Not after an irrevocable decision has been made. When the Government of India have *prima facie* grounds for resuming, they will give notice. But obviously that cannot be after the final

[Mr. A. G. Clow.]

decision, because a final decision, from its very nature, is irrevocable. The six months' notice will be given for the purpose of showing cause. I can give that assurance.

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

THE HONOURABLE THE PRESIDENT : I will now put the original Motion to the vote.

Resolution moved :

(Not reprinted—*vide* Appendix at the end of these Proceedings.)

The Question is :

“That that Resolution be adopted.”

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Tuesday, the 9th March, 1937.

APPENDIX.

Resolution moved by the Honourable Mr. A. G. Clow on the Road Development Fund.

"In supersession of the Resolution adopted by this Council on the 21st April, 1934, this Council recommends to the Governor General in Council that :—

1. There shall continue to be levied on motor spirit an extra duty of customs and of excise of not less than 2 annas per gallon and the proceeds thereof shall be applied for the purposes of road development.

2. (1) From the proceeds of such extra duty in any financial year there shall be deducted a sum as near as may be equivalent to the share in such proceeds arising from taxed motor spirit used for purposes of civil aviation during the calendar year ending in the financial year concerned, and such sum shall be at the disposal of the Governor General in Council for allotment as grants-in-aid of civil aviation.

(2) The balance of the proceeds shall be credited as a block grant to a separate Road Fund.

(3) For the purposes of this Resolution "taxed motor spirit" shall mean motor spirit upon which the duty of customs or excise shall have been paid and in respect of which no rebate of such duty shall have been given.

3. (1) The Road Fund shall be allocated as follows :

(a) a portion equal to fifteen per cent. shall be retained by the Governor General in Council as a central reserve :

(b) out of the remainder there shall be allocated by the Governor General in Council—

(i) a portion for expenditure in each Governor's province,

(ii) a portion for expenditure elsewhere in British India,

(iii) a portion for expenditure in Indian States and administered areas,

as near as may be in the ratio which the consumption of taxed motor spirit, other than motor spirit used for the purposes of civil aviation, in each area for which an allocation is to be made shall bear to the total consumption in India of taxed motor spirit, other than motor spirit used for the purposes of civil aviation, during the calendar year ending during the financial year concerned.

(2) The portions allocated for expenditure in Governor's provinces shall be retained by the Governor General in Council until they are actually required for expenditure in the manner hereinafter specified.

(3) If in the opinion of the Governor General in Council the Government of any Governor's province has at any time—

(a) failed to take such steps as the Governor General in Council may recommend for the regulation and control of motor vehicles within the province, or

(b) delayed without reasonable cause the application of any portion of the Road Fund allocated or re-allocated as the case may be for expenditure within the province,

the Governor General in Council may resume the whole or part of any sums which he may at the time hold for expenditure in that province.

(4) All sums resumed by the Governor General in Council from the account of any Local Government as aforesaid shall be re-allocated between the credit accounts of Local Governments and the Reserve with the Governor General in Council in the ratio of the main allocation for the financial year preceding the year in which the re-allocation is made. Provided that the sum so calculated as the share of the province from whose account the resumption has been made shall also be credited to the Reserve with the Governor General in Council.

4. The balance to the credit of the Road Fund or of any allocation thereof shall not lapse at the end of the financial year.

5. No expenditure shall be incurred from any portion of the Road Fund save as hereinafter provided.

6. The Central reserve with the Governor General in Council shall be applied first to defraying the cost of administering the Road Fund and thereafter upon such schemes for research and intelligence and upon such special enquiries connected with roads and upon special grants-in-aid for such objects connected with roads as the Governor General in Council may approve.

7. The sums allocated for expenditure in British India may, subject to the previous approval of the Governor General in Council to each proposal made, be expended upon any of the following objects namely :—

- (i) on the construction of new roads and bridges of any sort ;
- (ii) on the reconstruction or substantial improvement of existing roads and bridges ;
- (iii) in special cases, on the maintenance of roads and bridges, constructed, re-constructed or substantially improved from the Road Fund or from loans approved or sanctioned by the Governor General in Council ;
- (iv) to meet charges, including the cost of establishment, connected with the preparation of schemes of road development, or with the administration of provincial Boards of Communications ;
- (v) to meet charges including the cost of establishment connected with the control of motor transport ; and
- (vi) on the interest and amortization of loans approved or sanctioned before the date of this Resolution by the Governor General in Council, and spent or to be spent on the construction, reconstruction, or substantial improvement of roads and bridges.

8. In considering proposals for the construction, reconstruction or improvements of roads and bridges from the Road Fund, the Governor General in Council shall have regard to the present urgent need for improving the efficiency and reducing the cost of transport by road of agricultural produce to markets and railways.

9. (1) A Standing Committee for Roads shall be constituted each financial year consisting of—

- (a) the Member of the Governor General's Executive Council in charge of the department dealing with the Road Fund, provided that should the said Member of the Governor General's Executive Council be unable to be present at any meeting he may nominate some one in his place ;
- (b) one nominated official member other than a Railway official who shall be a member of the Legislative Assembly ;
- (c) three members elected by the members of the Council of State from amongst themselves ;
- (d) six members elected by the members of the Legislative Assembly from amongst themselves ; and
- (e) the Chief Commissioner of Railways.

(2) The Chairman of the Committee shall be one of the official Members of the Committee other than the Chief Commissioner of Railways whom the Governor General in Council may from time to time appoint.

(3) No approval to any proposal for expenditure from the Road Fund shall be given by the Committee unless it is supported by—

- (i) a majority of the members present and voting who are members of the Legislative Assembly, and
- (ii) a majority of the members of the whole Committee present and voting.

(4) All proposals for expenditure from the central reserve and all other proposals for expenditure from the Road Fund to be made in British India shall be referred by the Governor General in Council to the Standing Committee before he approves of them.

10. The functions of the Standing Committee shall be :

- (a) To consider the annual budget and accounts of the Road Fund.
- (b) To advise upon all proposals for expenditure from the central reserve.
- (c) To advise upon the desirability of all other proposals involving expenditure from the Road Fund in British India.
- (d) To advise upon proposals for the resumption of moneys held by the Governor General in Council as provided for in sub-paragraph (3) of paragraph 3 of this Resolution.
- (e) To advise the Governor General in Council generally on all questions relating to roads and road traffic which the Governor General in Council may refer to the Committee."