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OF THE

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1937.

COUNCIL OF STATE.

Tuesday, 6th April, 1937.

The Council met in the Council Chamber of the Council House at Eleven of the Clock, the Honourable the Chairman (Sir Phiroze Sethna) in the Chair.

STATEMENT LAID ON TABLE.

Commercial Treaties and Notes affecting India.

THE HONOURABLE MR. H. DOW (Commerce Secretary): Sir, I beg to lay on the table a further list of Commercial Treaties and Notes affecting India. The Agreements mentioned under items 3 and 4 of Part II, together with the Inter-Governmental Agreement of May 7, 1934, regarding Rubber Production and Export, are also laid on the table.

PART I.

Agreements which provide for the grant of most-favoured-nation treatment to the products and manufactures of India on terms of reciprocity.

Nil.

PART II.

This part refers to agreements to which India is a party. The Anglo-Muscat Treaty of 1891 was extended up to February 10, 1937. The question of its further extension is under consideration.

The Notes Exchanged between His Majesty's Government in the United Kingdom and the Brazilian Government provide for the prolongation of the Agreement of 1932 between India and Brazil, the notice of denunciation of which was given by the Brazilian Government.

Country.	Nature of Agreement.	Description.	Date of Agreement.
1. Muscat .	Note .	Treaty of Friendship, Commerce and Navigation, 1891.	February 11, 1936.
2. Brazil .	Notes .	Commerce . .	July 30/September 17, 1936.
3. Inter-Governmental (France, the United Kingdom, India, the Netherlands, and Siam).	Protocols (amending the Agreement of 1934).	Regulation of the Production and Export of Rubber.	June 27, 1935 and May 22, 1936.
4. Ditto . .	Protocol (amending the Agreement of 1934).	Ditto .	February 5, 1937.

PART III.

This part refers to agreements denounced. India acceded in 1928 to the Anglo-Siamese General and Commercial Treaties, the notice of denunciation of which has been given by the Siamese Government (items 1 and 2 below). As regards item 3, six months' notice of denunciation of the Ottawa Trade Agreement, 1932, between His Majesty's Government in the United Kingdom and the Government of India was given to His Majesty's Government on behalf of the Government of India on May 13, 1936. Before the expiry of the period of notice it was agreed that pending the conclusion of a new agreement for which negotiations were in progress the 1932 Ottawa Agreement should continue in force subject to termination at three months' notice by either side unless it were replaced by a new Agreement.

Country.	Nature and date of Agreement.	Description.	Date of expiry of Agreement.
1. Siam . . .	Treaty (July 14, 1925).	Revision of mutual Treaty arrangements.	November 5, 1937.
2. Siam . .	Treaty (July 14, 1925).	Commerce and Navigation.	November 5, 1937.
3. United Kingdom .	Agreement August 20.) 1932.)	Trade . .	November 13, 1936.

PROTOCOLS SIGNED FOR THE GOVERNMENTS OF FRANCE, UNITED KINGDOM, INDIA, THE NETHERLANDS AND SIAM AMENDING THE AGREEMENT OF MAY 7, 1934, FOR THE REGULATION OF THE PRODUCTION AND EXPORT OF RUBBER

London, June 27, 1935, and May 22, 1936.

No. I.

Protocol of June 27, 1935.

THE Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland, India, the Kingdom of the Netherlands and the Kingdom of Siam:

Being desirous of introducing certain amendments to the Agreement signed at London, on the 7th May, 1934, for the regulation of the production and export of rubber:

Have accordingly agreed as follows:—

1. The table to Article 4 (*a*) of the said Agreement shall be amended to read as follows:—

	1935.	1936.	1937.	1938.
Siam	40,000	40,000	40,000	40,000

2. The Government of Siam declares that its signature of the Agreement of the 7th May, 1934, given subject to ratification, shall be deemed to be ratified and become effective as from the 1st July, 1935.

3. The present Protocol shall come into force immediately.

In witness whereof the undersigned plenipotentiaries, being authorised to this effect by their respective Governments, have signed the present Protocol and affixed thereto their seals.

Done at London, this 27th day of June, 1935, in a single copy, which shall remain deposited in the archives of the Government of the United Kingdom, and of which duly certified copies shall be communicated by the Government of the United Kingdom to each of the other contracting Governments.

For the Government of the French Republic :

(L. S.) CH. CORBIN.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

(L. S.) SAMUEL HOARE.

(L. S.) MALCOLM MacDONALD.

For the Government of India :

Subject to the two reservations appended to the signature of the Agreement of the 7th May, 1934.

(L. S.) B. N. MITRA.

For the Government of the Kingdom of the Netherlands :

(L. S.) R. DE MAREES VAN SWINDEREN.

For the Government of the Kingdom of Siam :

(L. S.) PHYA SUBARN SOMPATI.

No. II.

Protocol of May 22, 1936.

THE Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland, India, the Kingdom of the Netherlands and the Kingdom of Siam;

Being desirous of introducing certain amendments to the Agreement signed at London, on the 7th May, 1934, for the regulation of the production and export of rubber :

Have accordingly agreed as follows :—

1. The table to Article 4 (*a*) of the said Agreement shall be amended to read as follows :—

	1935.	1936.	1937.	1938.
India	12,500	12,500	12,500	13,000
Burma	8,000	8,500	9,000	9,250

2. The Government of India declares with reference to the reservations made at the time of signature of the Agreement of the 7th May, 1934, and of the Protocol of the 27th June, 1935, that the Indian States have undertaken to act in accordance with the provisions of that Agreement as amended by the present Protocol and that the Indian Legislature has already taken legislative action necessary to implement the terms of the Agreement.

3. The present Protocol shall come into force immediately.

In witness whereof the undersigned plenipotentiaries, being authorised to this effect by their respective Governments, have signed the present Protocol and affixed thereto their seals.

Done at London, the 22nd day of May, 1936, in a single copy, which shall remain deposited in the archives of the Government of the United Kingdom, and of which duly certified copies shall be communicated by the Government of the United Kingdom to each of the other contracting Governments.

For the Government of the French Republic :

(L. S.) CHARLES CORBIN.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

(L. S.) ANTHONY EDEN.

For the Government of India :

(L. S.) B. N. MITRA.

For the Government of the Kingdom of the Netherlands :

(L. S.) R. DE MAREES VAN SWINDEREN.

For the Government of the Kingdom of Siam :

(L. S.) PHRA BOVARA SNEHA.

PROTOCOL BETWEEN THE GOVERNMENTS OF FRANCE, UNITED KINGDOM, INDIA, THE NETHERLANDS AND SIAM, AMENDING THE AGREEMENT OF MAY 7, 1934, FOR THE REGULATION OF THE PRODUCTION AND EXPORT OF RUBBER.

London, February 5, 1937.

THE Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland, India, the Kingdom of the Netherlands and the Kingdom of Siam;

Being desirous of introducing certain amendments to the Agreement signed at London on the 7th May, 1934, for the regulation of the production and export of rubber:

Have accordingly agreed as follows:—

1. The table to Article 4 (*a*) of the said Agreement shall be amended to read as follows:—

	1936.	1937.	1938.
Netherlands India	500,000	520,000	540,000

2. The present protocol shall come into force immediately.

In witness whereof the undersigned plenipotentiaries, being authorised to this effect by their respective Governments, have signed the present Protocol and affixed thereto their seals.

Done at London, this 5th day of February, 1937, in a single copy, which shall remain deposited in the archives of the Government of the United Kingdom, and of which duly certified copies shall be communicated by the Government of the United Kingdom to each of the other contracting Governments.

For the Government of the French Republic:

(L. S.) CHARLES CORBIN.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

(L. S.) ANTHONY EDEN.

For the Government of India:

(L. S.) Y. N. SUKTHANKAR.

For the Government of the Kingdom of the Netherlands:

(L. S.) R. DE MAREES VAN SWINDEREN.

For the Government of the Kingdom of Siam:

(L. S.) PHYA RAJAWANGSAN.

the pro.

(INTER-GOVERNMENTAL AGREEMENT.)

THE Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Government of the United Kingdom), India, the Kingdom of the Netherlands and the Kingdom of Siam;

Considering that it is necessary and advisable that steps should be taken to regulate the production and export of rubber in and from producing countries with the object of reducing existing world stocks to a normal figure and adjusting in an orderly manner supply to demand and maintaining a fair and equitable price level which will be reasonably remunerative to efficient producers, and being desirous of concluding an agreement for this purpose;

Have accordingly agreed as follows:—

ARTICLE 1.

The obligations under this Agreement of the Government of the French Republic apply to French Indo-China; those of the Government of the United Kingdom to Ceylon, the Federated Malay States, the Unfederated Malay States, the Straits Settlements, the State of North Borneo, Brunei and Sarawak; those of the Government

of India to India (including Burma); those of the Government of the Kingdom of the Netherlands to the Netherlands Indies; and those of the Government of the Kingdom of Siam to Siam.

ARTICLE 2.

For the purposes of this agreement—

(*a*) "Basic quotas" means the quotas referred to in Article 4 (*a*).

(*b*) "International Rubber Regulation Committee" means the Committee referred to in Article 15.

(*c*) "Control Year" means any calendar year during the continuance of this Agreement, or, in the case of the year 1934, the portion of that year between the date of the coming into force of the regulation under Article 3 (*b*) and the 31st December, 1934.

(*d*) "Rubber plant" means and includes plants, trees, shrubs or vines of any of the following :—

(A) Hevea Braziliensis (Para Rubber).

(B) Manihot Glaziovii (Ceara Rubber).

(C) Castilloa elastica.

(D) Ficus elastica (Rambong).

(E) Any other plant which the International Rubber Regulation Committee may decide is a rubber plant for the purpose of this Regulation.

(*e*) "Rubber" includes (*a*) rubber prepared from the leaves, bark or latex of any rubber plant and the latex of any rubber plant, whether fluid or coagulated, in any stage of the treatment to which it is subjected during the process of conversion into rubber, and latex in any state of concentration; and (*b*) all articles and things manufactured wholly or partly of rubber.

(*f*) "Replanting" or "replant" means planting during the period of the Regulation more than thirty rubber plants on any acre, or seventy-five rubber plants on any hectare of any area carrying rubber plants at the date the Regulation becomes operative.

(*g*) "Net exports" means the difference between the total imports of rubber into a territory during a period and the total exports of rubber out of that territory during the same period, provided that, notwithstanding the meaning attached to "rubber" elsewhere in this Agreement, imports or re-exports of articles and things manufactured wholly or partly of rubber and rubber consumed in the country of production shall not be included in arriving at net exports.

(*h*) "Owner" means and includes the proprietor occupier or person in the possession or in charge of a holding or such person as is, in the opinion of the Government concerned, the Manager or Agent of or entitled to act for or on behalf of such proprietor occupier or person.

(*i*) "Holding" means land on which rubber plants are grown which is in the ownership possession or occupation or is being worked by or under the control of the owner.

(*j*) "Person," unless the context otherwise requires includes a company corporation partnership or other body whether corporate or not.

ARTICLE 3.

(*a*) The contracting Governments undertake to take such measures as may be necessary to maintain and enforce in their respective territories, as defined in Article 1, the regulation and control of the production, export and import of rubber as laid down in Articles 4, 5, 6, 8, 9, 10, 11, 12 and 13 of this Agreement, hereinafter referred to as "the regulation."

(*b*) The said regulation shall come into operation on the 1st day of June, 1934, and shall remain in force until the 31st of December, 1938, as a minimum period.

(*c*) Not more than twelve calendar months and not less than nine calendar months prior to the 31st December, 1938, the International Rubber Regulation Committee shall make a recommendation to the contracting Governments as to the continuation or otherwise of the regulation. The recommendation, if in favour of continuation, may

suggest amendments to the regulation and include proposals relating to the other provisions of this agreement.

(*d*) Each contracting Government shall signify to the International Rubber Regulation Committee and to the other contracting Governments its acceptance or rejection of the recommendation referred to in the immediately preceding paragraph within three calendar months after the date of the receipt of such recommendation.

(*e*) If the said recommendation is accepted by all the contracting Governments, the contracting Governments undertake to take such measures as may be necessary to carry out the said recommendation. The Government of the United Kingdom shall in this event draw up and communicate to all the other contracting Governments a declaration certifying the terms of the said recommendation and its acceptance by all the contracting Governments.

(*f*) If the said recommendation is not accepted by all the contracting Governments, the Government of the United Kingdom may, of its own motion, and shall, if requested by any other contracting Government, convoke a conference of the contracting Governments to consider the situation.

(*g*) Unless a recommendation to continue the regulation is accepted under paragraphs (*d*) and (*e*) above, or unless an agreement for continuation is concluded between the contracting Governments at the conference referred to in paragraph (*f*) above, the regulation and all the obligations arising out of this agreement shall terminate on the 31st December, 1938. If at the conference referred to in paragraph (*f*) above an agreement for continuation is concluded between some but not all of the contracting Governments, the regulation and all the obligations arising out of this agreement shall terminate on the 31st December, 1938, in respect of any contracting Government not a party to the agreement for continuation.

ARTICLE 4.

In the case of the Straits Settlements, the Federated Malay States, and the Unfederated Malay States and Brunei (which shall be deemed to constitute a single group of territories for this purpose), and of the Netherlands Indies, Ceylon, India (including Burma), the State of North Borneo, Sarawak and Siam, the exports of rubber from the territory shall be regulated in accordance with the following provisions :—

(*a*) The following annual quantities in tons of 2,240 English pounds dry rubber shall be adopted as basic quotas for each territory or group of territories for the control years specified :—

——	1934.	1935.	1936.	1937.	1938.
	Tons.	Tons.	Tons.	Tons.	Tons.
Straits Settlements, Federated Malay States, Unfederated Malay States and Brunei.	7/12 of 504,000	538,000	569,000	589,000	602,000
Netherlands India .	7/12 of 352,000	400,000	443,000	467,000	485,000
Ceylon . . .	7/12 of 77,500	79,000	80,000	81,000	82,500
India . . .	7/12 of 6,850	8,250	9,000	9,000	9,250
Burma . . .	7/12 of 5,150	6,750	8,000	9,000	9,250
State of North Borneo	7/12 of 12,000	13,000	14.000	15,500	16,500
Sarawak . . .	7/12 of 24.000	28,000	30,000	31,500	32,000
Siam . . .	7/12 of 15,000	16,000	15,000	15,000	15,000

(*b*) The International Rubber Regulation Committee shall fix from time to time for each territory or group of territories a percentage of the basic quota. Except in the case of Siam, the percentage of the basic quota fixed by the International Rubber Regulation Committee shall be the same for each territory or group of territories. In the case of Siam, the percentage of the basic quota for that territory shall not

be less than 50 per cent. for the year 1934, than 75 per cent. for the year 1935, than 85 per cent. for the year 1936, than 90 per cent. for the year 1937, and 100 per cent. for the year 1938.

(c) In each control year the quantity of rubber, which is equivalent to the percentage so fixed of the basic quotas of each territory or group of territories, constitutes for that territory or group of territories the "permissible exportable amount" for such territory or group of territories.

ARTICLE 5.

The net exports of rubber from each territory or group of territories shall be limited to the "permissible exportable amount";

Provided that (1) in any control year the net exports may be permitted to exceed the "permissible exportable amount" by a quantity not greater than 5 per cent. of that amount but, if the "permissible exportable amount" is exceeded in any year, the net exports for the immediately following control year shall be limited to the "permissible exportable amount" for such year less the amount of such excess for the previous year;

(2) If any territory or group of territories has exported in any control year less than its "permissible exportable amount," the net exports from such territories or group of territories for the immediately following year may be permitted to exceed the "permissible exportable amount" for such year by an amount equal to the deficiency below the "permissible exportable amount" for the previous year if such deficiency was not more than 12 per cent. of such "permissible exportable amount," or equal to 12 per cent. of such "permissible exportable amount" if the deficiency exceeded 12 per cent.;

(3) In the case of the group of territories comprising the Straits Settlements, the Federated Malay States and the Unfederated Malay States and Brunei, the obligations arising under this Article may be executed (*a*) by controlling the actual production of rubber on the islands of Singapore and Penang (parts of the Straits Settlements), and (*b*) by controlling the exports of rubber from the remainder of this group of territories in such a manner that the total of the production of rubber during the control year in question in Singapore and Penang, together with the net exports of rubber during the said year from the remainder of the group of territories, shall not exceed the amount of the "permissible exportable amount" for the whole group of territories.

(4) For the purpose of the preceding proviso and of the provisions of Articles 9, 10 and 13 below, the entry of rubber from the remainder of the group into Singapore or Penang, or *vice versa*, shall be deemed to be an export or import as the case may be.

ARTICLE 6.

In the case of French Indo-China, the Administration (i) shall maintain a complete record of all rubber leaving the territory and will establish such control as is necessary for this purpose, and (ii) on the happening of the events specified in paragraphs (*a*) or (*b*) below, shall cause the quantities of rubber specified in those paragraphs [taken in conjunction with paragraphs (*c*) and (*d*)] to be delivered to the order of the International Rubber Regulation Committee in accordance with the provisions of paragraph (*e*) below:—

(*a*) If in any control year the total quantity of rubber leaving French Indo-China for any part of the world shall exceed 30,000 tons (of 2,240 English pounds), but shall be less than the total quantity of unmanufactured rubber entering and retained in France in that year, a quantity of rubber shall be delivered equivalent to 10 per cent. of the amount by which the total quantity of rubber leaving French Indo-China exceeds 30,000 tons.

(*b*) If in any control year the total quantity of rubber leaving French Indo-China exceeds the total quantity of unmanufactured rubber entering and retained in France in that year, a quantity of rubber shall be delivered equivalent to 10 per cent. of the difference between 30,000 tons and the amount of the retained quantity aforesaid, together with an additional quantity corresponding to a percentage of the difference between the total quantity of unmanufactured rubber entering and retained in France, and the total quantity of rubber leaving French Indo-China for any part of the world during that year, such percentage being the average percentage of reduction of basic quotas which shall have been applied in that year in the territories specified in Article 4, excluding Siam.

(c) Tho quantities above mentioned or referred to shall be reduced for the control year ending the 31st December, 1934, to 7/12ths of those quantities.

(d) Provided, however, that the quantity of rubber to be delivered by French Indo-China in any control year shall not exceed a quantity equal to the percentage of the total quantity of rubber leaving French Indo-China corresponding to the average percentage of reduction of the basic quotas which shall have been applied in that year in the territories specified in Article 4, excluding Siam.

(e) The quantities of rubber referred to in paragraphs (a) and (b) above [taken in conjunction with paragraphs (c) and (d)] shall be notified to and agreed with the International Rubber Regulation Committee and delivered free of cost and all charges in the form of Siugapore standard sheets or Singapore standard crêpe, to the order of the International Rubber Regulation Committee in Singapore (or any other port or place selected by the International Rubber Regulation Committee) within three months after the expiration of the control year in question.

ARTICLE 7.

The International Rubber Regulation Committee may dispose of all rubber delivered in accordance with the provisions of the preceding Article in such manner as it shall deem to be most beneficial to the objects which are envisaged in the provisions of the present Convention.

ARTICLE 8.

The provisions of Articles 9, 10, 11, 12, 13 and 14 below apply to all the territories specified in Article 1 unless the contrary is expressly stated.

ARTICLE 9.

The exportation of rubber from a territory or group of territories shall be prohibited under penalties that will be effectively deterrent, unless such rubber is accompanied by a certificate of origin duly authenticated by an official duly empowered for this purpose by the administration of the territory or group. The penalties which may be imposed for this offence shall include (a) the destruction, and (b) the confiscation of the rubber. This Article does not apply to the islands of Singapore and Penang.

ARTICLE 10.

The importation of rubber into a territory or group of territories shall be prohibited, under penalties that will be effectively deterrent, unless such rubber is accompanied by a certificate of origin duly authenticated by a competent official of the Administration of the territory or group of origin. The penalties which may be imposed for this offence shall include (a) the destruction, and (b) the confiscation of the rubber.

ARTICLE 11.

(a) Every owner shall be prohibited, under penalties that shall be effectively deterrent, from having in his possession or under his control within a territory or group of territories at any time stocks of rubber exceeding 20 per cent. of the quantity of rubber wholly grown and produced and removed from his holding during the preceding twelve months, or, alternatively, a quantity equivalent to twice the amount he is entitled to export during any month.

(b) The total of all other stocks of rubber in the territory shall be limited to a quantity not exceeding 12½ per cent. of its "permissible exportable amount" for the control year.

(c) The preceding provisions of this Article do not apply to French Indo-China, India (including Burma), the islands of Singapore or Penang, Sarawak or Siam, but in India (including Burma), Sarawak and Siam the stocks of rubber shall be limited to normal proportions having regard to the amount of rubber internally consumed.

ARTICLE 12.

(a) Except as provided in paragraphs (b) and (c) of this article, the planting of rubber plants during the period of the Regulation shall be prohibited absolutely under penalties that shall be effectively deterrent, such penalties including the compulsory eradication and destruction at the expense of the owner of the plants so planted.

(b) In Siam the planting of an area not exceeding in the aggregate 31,000 acres may be permitted.

(c) In all territories—

(i) The planting of small areas for exclusively experimental purposes may be permitted provided that during the period of the Regulation the total area of such permitted plantings in any territory or group of territories shall not exceed the equivalent of one-quarter of 1 per cent. of that territory's or group's ascertained total area planted at the date of commencement of the Regulation.

(ii) The limited replanting of areas at present carrying rubber plants may be permitted upon the following conditions: An owner who desires to replant part of his holding shall be obliged first to notify the Administration of the territory or group of territories of his intention to replant and to give such particulars of the proposed replanting as may be required by the Administration, and he may then be permitted to replant in any control year to the extent set out in such particulars an area not exceeding 10 per cent. of the total planted area of his holding in the territory or group of territories at the date of commencement of the Regulation, provided that the aggregate of the areas so replanted during the minimum period of the Regulation [specified in Article 3 (*b*)] shall not exceed 20 per cent. of such total planted area of his holding.

ARTICLE 13.

The exportation from the territory or group of territories of any leaves, flowers, seeds, buds, twigs, branches, roots or any living portion of the rubber plant that may be used to propagate it shall be prohibited under penalties that shall be effectively deterrent.

ARTICLE 14.

The contracting Governments and the Administrations of the territories or group of territories to which the present Agreement applies will co-operate with each other to prevent smuggling evasions and other abuses of the Regulation.

ARTICLE 15.

(*a*) An International Committee, to be designated "The International Rubber Regulation Committee," shall be constituted as soon as possible.

(*b*) The said Committee shall be composed of delegations representing the territories or groups of territories to which the present Agreement applies, and the numbers of the respective delegations and the numbers of the persons who may be nominated as substitutes to replace members of delegations who are absent shall be as follows.—

	Members.	Substitute Members.
(1) Straits Settlements, Federated Malay States, Unfederated Malay States, Brunei	4	2
(2) Netherlands India	3	2
(3) Ceylon	2	1
(4) India, including Burma	1	1
(5) French Indo-China	1	1
(6) State of North Borneo	1	1
(7) Sarawak	1	1
(8) Siam	1	1

(*c*) The Government of the United Kingdom shall be informed as soon as possible by the other contracting Governments of the persons first designated as members of delegations representing their respective territories. All subsequent changes in the membership of delegations shall be notified by communications addressed to the Chairman of the Committee.

(*d*) The Government of the United Kingdom will convoke the first meeting of the Committee as soon as possible, and may do so when the members of six delegations have been designated.

(*e*) The principal office of the Committee shall be in London and its meetings shall be held in London. The Committee shall make such arrangements as may be necessary for office accommodation and may appoint and pay such officers and staff as may be required. The remuneration and expenses of members of delegations shall be defrayed entirely by the Governments by whom they are designated.

(*f*) The proceedings of the Committee shall be conducted in English.

(*g*) The Committee shall at its first meeting elect its Chairman and Vice-Chairman.

(*h*) The Chairman and Vice-Chairman shall not be members of the same delegation.

(*i*) Meetings shall be convened by the Chairman, or in his absence by the Vice-Chairman. Not more than three calendar months shall elapse between any two consecutive meetings. An extraordinary meeting shall be convened at any time at the request of any delegation within seven days of the receipt of the request by the Chairman.

(*j*) The Committee shall perform the functions specifically entrusted to it under Articles 3 (*c*), 4 (*b*), 6, 7, 17 and 18 of this Agreement, and shall, in addition, collect and publish such statistical information and make such other recommendations to Governments relevant to the subject-matter of this Agreement as may seem desirable, in particular with reference to the disposal of any rubber which may come into the ownership of any Government as the result of the carrying out of Articles 9 and 10 of this Agreement. The Committee shall do all such other lawful things as may be necessary, incidental or conducive to the carrying out of its functions, and give such publicity to its actions as it may deem necessary or desirable.

(*k*) Each delegation shall vote as one unit. In case of delegations composed of more than one member, the name of the member entitled to exercise the vote shall be communicated in case of the first meeting of the Committee to the Government of the United Kingdom and thereafter to the Chairman of the Committee. The voting member may in case of absence, by communication to the Chairman, nominate another member to act for him.

(*l*) Each delegation shall possess a number of votes calculated on the basis of one vote for every complete 1,000 tons of the basic quota of the control year for the time being for the territory or group of territories represented by that delegation, and for the purpose of voting the territory of French Indo-China shall be deemed to have the following quotas, *viz* :—

	Tons.
1934	22,500
1935	27,000
1936	34,000
1937	44,000
1938	52,000

(*m*) The presence of voting members of at least four delegations shall be necessary to constitute a quorum at any meeting; provided that if within an hour of the time appointed for any meeting a quorum as above defined is not present, the meeting may be adjourned by the Chairman to the same day, time and place in the next week, and if at such adjourned meeting a quorum as defined above is not present, those delegations who are present at the adjourned meeting shall constitute a quorum.

(*n*) Decisions shall be taken by a majority of the votes cast; provided that—

(i) A decision fixing or varying the permissible exportable percentage of the basic quotas, or making or modifying or abrogating the rules of procedure shall require a three-fourths majority of the total votes which could be cast by all the delegations entitled to vote, whether such delegations are present or not;

(ii) The delegations representing French Indo-China shall only be entitled to participate in any discussion or vote on the permissible exportable percentage of the basic quotas if and so long as this territory is conforming to the Regulation on the basis of Article 6 (*b*).

(*o*) The Committee shall at the beginning of each control year draw up its budget for the forthcoming year. The budget shall show under appropriate headings and in reasonable detail the estimate of the Committee of its expenses for that year. The budget shall be communicated to the contracting Governments and to the Administrations of the territories or group of territories to which the present Agreement applies, and shall show the share of the expenses falling upon each territory or group of territories in accordance with the provisions of Article 16.

As soon as possible after the end of each control year, the Committee shall cause to be drawn up and audited by a duly qualified chartered accountant a statement of

account showing the money received and expended during such years. The statement of account shall be communicated to the contracting Governments and to the Administrations of all territories or group of territories to which the present Agreement applies.

(*p*) The Committee may draw up, put into force, modify or abrogate rules for the conduct of its business and procedure as may from time to time be necessary, provided that its rules of procedure shall be at all times in conformity with the preceding provisions of this Article.

ARTICLE 16.

The expenses of the International Rubber Regulation Committee shall be defrayed by the Administrations of all territories or group of territories to which the present Agreement applies, other than Sarawak and Siam. One half of the contribution for the whole year of each territory or group of territories, as shown in the budget drawn up by the Committee, shall be paid immediately on receipt of the budget by the contracting Governments, and the balance of such contribution not later than 6 months after this date. The contribution of each territory or group of territories shall be proportionate to their respective basic quota for the control year to which the budget relates. The basic quotas of French Indo-China for this purpose shall be those specified in Article 15 (*l*).

ARTICLE 17.

(*a*) The Administrations of each of the territories or group of territories to which the present Agreement applies shall not later than the 1st January, 1935, communicate to the International Rubber Regulation Committee a declaration showing the total ascertained area in the territory or group planted with rubber on the 1st June 1934.

(*b*) Each Administration will furnish to the International Rubber Regulation Committee all reasonable assistance to enable the Committee properly and efficiently to discharge its duties. Such assistance shall include all necessary statistical information and ample facilities to duly accredited agents of the Committee for the investigation of the manner in which the regulation is being carried out in the territory.

ARTICLE 18.

The International Rubber Regulation Committee shall be empowered to, and shall within one month after the date of its first meeting, invite the body or bodies they consider most representative of rubber manufacturers to nominate three persons representative of such manufacturers, of whom one shall be representative of manufacturers in America, and such representatives shall form a panel who will be invited to tender advice from time to time to the International Rubber Regulation Committee as to world stocks, the fixing and varying of the permissible exportable percentage of the basic quotas, and cognate matters affecting the interests of rubber manufacturers.

ARTICLE 19.

The contracting Governments, recognising that a natural balancing of production and consumption can be hastened by research with a view to developing new applications and by propaganda, declare that they will consider the possibility of (i) levying and collecting a uniform cess on the net exports from their respective territories during the period of the Regulation for the purpose of supporting such research and propaganda and (ii) co-operating in the constitution of an International Rubber Research Board to plan the research and propaganda. If the proposals specified in this article are put into operation, no financial contribution will be expected in respect of Sarawak or Siam.

In witness whereof the undersigned plenipotentiaries, being authorised to this effect by their respective Governments, have signed the present Agreement and affixed thereto their seals.

Done at London this 7th day of May, 1934, in a single copy, which shall remain deposited in the archives of the Government of the United Kingdom, and of which duly certified copies shall be communicated by the Government of the United Kingdom to each of the other contracting Governments.

For the Government of the French Republic:

CH. CORBIN. (L. S.)

For the Government of the United Kingdom of Great Britain and Northern Ireland :

JOHN SIMON. (L. S.)

P. CUNLIFFE-LISTER. (L. S.)

For the Government of India :

Subject to reservations annexed :

B. N. MITRA. (L. S.)

In signing this Agreement on behalf of my Government, I have been instructed to make the following reservations.

(*a*) The accession of the Government of India is subject to the agreement and co-operation of rubber-producing "Indian States" in India, in which areas the Government of India has no power to maintain or enforce the restriction. The terms of the Inter-Governmental Agreement have been brought to the notice of the States concerned, and the Government of India has every reason to believe that they will act in accordance with its provisions.

(*b*) In so far as legislative action will be necessary to implement the terms of the Agreement, the accession of the Government of India is subject to the approval of the Indian Legislature.

May 7, 1934.

(Signed) B. N. MITRA.

For the Government of the Kingdom of the Netherlands :

R. DE MAREES VAN SWINDEREN. (L. S.)

For the Government of the Kingdom of Siam :

Subject to ratification :

PHYA SUBARN SOMPATI. (L. S.)

STANDING COMMITTEE FOR ROADS, 1937-38.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): The next item is the elections.

The following Honourable Members have been nominated for election to serve on the Standing Committee for Roads:

The Honourable Mr. R. H. Parker,

The Honourable Rao Bahadur K. Govindachari,

The Honourable Mr. Abdur Razzak Hajee Abdus Sattar, and

The Honourable Sardar Buta Singh.

There are four candidates for three seats and an election is therefore necessary, which will be conducted by means of the single transferable vote. The Council will now proceed to elect three Members. Voting papers will be distributed to Honourable Members and I request them to vote in accordance with the instructions noted thereon.

(Voting papers were distributed to Honourable Members and the Ballot taken.)

CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): We will now proceed with the second election, *i.e.*, to elect six non-official Members from the Council who shall be required to serve on the Central Advisory Council for Railways.

There were in all 15 candidates at first, of whom the following seven Honourable Members have withdrawn their candidature:

The Honourable Rao Bahadur K. Govindchari,

The Honourable Mr. V. V. Kalikar,

The Honourable Mr. Abdur Razzak Hajee Abdus Sattar,

The Honourable Pandit Hirday Nath Kunzru,

The Honourable Nawabzada Khurshid Ali Khan,

The Honourable Rai Bahadur Lala Ram Saran Das, and

The Honourable Mr. B. N. Biyani.

There now remain the following eight candidates for election:

The Honourable Haji Syed Muhammad Husain,

The Honourable Mr. Sita Kanta Mahapatra,

The Honourable Chaudhuri Ataullah Khan Tarar,

The Honourable Sir David Devadoss,

The Honourable Lieutenant-Colonel Sir Shaikh Hissam-ud-din Bahadur,

The Honourable Mr. Ramadas Pantulu,

The Honourable Kumar Nripendra Nath Sinha, and

The Honourable Sardar Buta Singh.

As there are eight candidates for six seats, an election will be necessary, which will be conducted by means of the single transferable vote. The Council will now proceed to elect six Members. Voting papers will be handed round and I ask Honourable Members to vote in accordance with the instructions noted thereon.

RESOLUTION *RE* INCREASE IN THE NUMBER OF INDIAN JUDGES IN HIGH COURTS.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): Yesterday afternoon the Honourable Haji Syed Muhammad Husain read out the Resolution* which he is going to place before the House to-day. I now request him to proceed with his speech in support of his Motion.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN (United Provinces West: Muhammadan): Sir, yesterday after the Council had adjourned and I was going out one of my friends approached me and said that the Resolution did not go far enough and that I should have put down, instead of two-thirds of the total number of Judges in a High Court, that all the Judges should be Indian, and I said: "No, I wanted to put my demand in a very moderate form." Then he pointed out to me, "You have seen the fate of the amendment on the question of committees". I said to him that this is more moderate than even the amendment about Committees, and I want to impress the same thing upon this House,

*"This Council recommends to the Governor General in Council that the number of Indian Judges in the High Courts of India be increased to at least two-thirds of the total number of the Judges of that High Court."

[Haji Syed Muhammad Husain.]

namely, that the Judges of the High Court should be Indians to the extent of two-thirds of the total number of the strength in that High Court. Now, Sir, you will see that, so far as the Honourable Judges of the High Courts are concerned, it is impossible to say that it is necessary to have for expert opinion or for imparting some education a non-Indian from outside. The Indian Judges have proved in every High Court their worth and capacity to administer justice without fear and with the fairness which is needed for a Judge of the High Court in India. Litigation has tremendously increased and the number of Judges has almost doubled in some of the High Courts. The number of European lawyers has considerably reduced in every High Court. When members of the Bar were raised to the Bench, the claims of Englishmen who were practising at the Bar had to be considered along with the Indian members of the Bar. But now, such Englishmen as are practising at the Bar are hardly able to compete with Indian members of the Bar for appointment to the Bench. So, the number of Indian Judges appointed from the Bar should naturally increase. But what has happened? In a good many High Courts, instead of appointing Englishmen practising at the Indian Bar, Englishmen have been appointed direct from England. There must be some sort of ratio between the number of Indian and European Judges in the High Courts. So far, the number of Indian Judges is about half in High Courts. Now, when the number of Judges is increasing on account of increase in the litigation, I want that the posts should be filled by Indians. To fill them by persons appointed direct from England is neither judicious nor advantageous for the obvious reason that there is absolutely no similarity or connection between the civil law of this country and the civil law of England except in one or two branches. Gentlemen sent out from England have had their experience in English courts. They take a good deal of time in mastering the civil law and naturally they are handicapped, as anybody would be, for a considerable time, before they are able to decide important questions of civil law as a single Judge. If an Indian Judge is appointed, that time would naturally be saved. I do not mean to say that the gentlemen who come from outside to fill these posts are in any way inferior to Indian Judges. Some of them are men of great integrity, learning and wisdom. But the question is, why should in this country, when the Indian Judges are equally good and in some cases better in administering justice, there be more than a certain quota for non-Indians? There can be only one reason and that is to provide more places for these gentlemen. I do not mean to exclude Englishmen altogether from holding any such post in India. If India is an equal partner within the Commonwealth of British Empire, there should be no exclusion of people of one part from the other. I would even go to the extent of saying that if reciprocal treatment is maintained, I would not even object to a gentleman who is capable of holding a certain appointment coming from a colony if they have no objection to taking an Indian from India in their colony. But here the question is, what should be the percentage of non-Indian Judges in the High Courts? The number now in each High Court is about 12, and I think that four out of 12 is not a small number. In the High Courts many branches of law are dealt with which are absolutely peculiar to this country. I will give only a very few instances. There is the law of pre-emption; there are the customary laws. The Judges who have to decide cases as the members of the highest court of appeal in India should naturally be such persons who

know the social life and customs of the litigants whose cases come up before them for decision.

THE HONOURABLE MR. BIJAY KUMAR BASU (Bengal: Nominated Non-Official): You want the Judges to exercise their personal knowledge?

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: What I mean is that they should not be led away by the influence of social customs of their own which are entirely different from those of this country. A person is brought up in a certain atmosphere and environment, and naturally that person is influenced by those things. Now, it must be admitted that the conditions in this country and in European countries are entirely different, and in respect of certain branches of law, the law of England and other countries is different to the law in India. I will give one instance. In the law of evidence, although the principle applicable is exactly the same, yet there are differences in applying it. When a witness makes a statement on oath the presumption in England is that he is telling the truth. (*An Honourable Member:* "Is it otherwise here?") It is not only otherwise but it has been stated in case after case that in this country it is not uncommon for witnesses to perjure themselves; therefore it cannot be assumed that a witness on oath is telling the truth. If he is disbelieved on one point, he is believed on other points unless his evidence is discredited by other facts. That is not the case in England, where if you disbelieved a witness on one point you disbelieve the whole of his statement. (*An Honourable Member:* "Quite wrong!") In English law if a witness is found to have perjured himself he is not believed. And this was the view of the Chief Justice of the Punjab in a case which he decided in the Allahabad High Court, and that view was dissented from in a subsequent decision, and if my Honourable friend challenges this proposition I could give him not one but many authorities on this point. Not only that, I say that in every branch of law as administered in this country and in England there are differences on certain points, and that is due to the different conditions prevailing in the two countries. Then certain branches of law administered here are absolutely unknown to English people, namely, our personal laws. It may be said that a member of one community here is quite ignorant of the personal law of the other community. But that is not so. People live so close together and see each other's customs daily that nothing is new to them. In fact you often find the personal law of one community adopted by another. You will find some Muhammadan sects that still follow Hindu law and custom. Then again, the education imparted in Indian Law Colleges teaches both Hindu and Muhammadan law side by side, whereas a gentleman coming from England knows nothing about these. He has never heard of Mitakshara and Dayabhaga. He gets no chance of training and he is not examined before recruitment. The day he arrives in this country he sits on the Bench and decides cases. That is certainly a great handicap. He is generally put with a Senior Judge, and we are told it is a Bench of two Judges. To look at, there are two Judges, but in fact there is only one Judge. The other Judge is merely a dummy and signs the judgment which is delivered by his colleague. That is how many branches of civil law are administered by these people who come out without a study of our laws or practice at a Bar where laws of that kind are administered. There is another thing I want to point out. When we put down any Motion for increased Indianisation, say of the army or some other service, the excuse for keeping Europeans on in those

[Haji Syed Muhammad Husain.]

services is that it is absolutely essential that we should at this stage have Europeans to give us knowledge of a specialised kind, particularly where modern inventions and science are involved. But in a High Court nothing of that kind is necessary. And it is not only unnecessary but prejudicial to the administration of justice, because, as I have explained, before they learn Indian customs and laws, a good deal of time is wasted. Some Judges openly say in Court, "I do not claim to know Indian law very well; I hope you will kindly help me in this point or that". Well, it is very straightforward and honest, but what about the waste of time? Can you entrust important cases to the decision of such Judges at that stage? Now, so far as I. C. S. Judges are concerned, they certainly can be raised to the Bench of any High Court from the Service. Some of these Service men have no doubt proved very eminent Judges, and some of the men from England also. I do not mean to say that such Judges from England or from the Service are not competent Judges. Far from it. But it is their natural handicap and the situation in which they are placed. They are asked to administer laws about which they know nothing and have never had an opportunity of coming into contact with. Therefore I say by all means have as many as you think honestly consistent with the spirit of give and take, with the policy of co-operation and with no idea of exclusion, but I say give only a proper share and not an improper share. As I said before, to give, in my opinion, more than that would certainly be merely to provide for certain people who cannot get much in their own country but that is much too unfair for this country.

Sir, with these words I move my Resolution.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern: Non-Muhammadan): Mr. President, in the Resolution which the Honourable Haji Syed Muhammad Husain has moved he has urged that the ratio of Indian Judges in the High Court should be increased. Sir, it cannot be denied that Indians have distinguished themselves as Judges and Advocates. We have had great Indian Judges in the past. We have great Indian Judges in our High Courts today. In the past, Sir, we have had as Judges lawyers of the stature of Bhashyam Ayyangar and Muthuswami Ayyar in Madras, of Kashinath Trimbak Telang, Badruddin Tyabjee and Ranade in Bombay and of Mahmood and Promoda Charan Banerjee in our Court, Dwarkanath Mitter and Ashutosh Mukerji in Calcutta. They are honoured names in legal circles. The Privy Council has on many occasions expressed the view that the subordinate judiciary in India is exceedingly competent. Well, Sir, Indian Bars too are getting stronger and stronger every day: they are getting more efficient; their efficiency has increased in recent years and there is no denying the fact that in important centres the European Bar has almost entirely disappeared. We have in our Court fortunately still one European giant left. I am referring to our respected leader Mr. O'Connor who is the leader of the Barrister Section of the Bar in Allahabad. We have still one respected leader left, but the European Bar has almost disappeared from important High Court centres. The Provincial Service, Judicial Service, too is getting more and more competent. It is an exceedingly competent service. I think for the salary that we pay to our subordinate judicial service we get a very competent class of officer and the number of Indians in the I. C. S. is also increasing. These are factors that we should take

into consideration in deciding this question. Indians in the I. C. S. Judicial Service, have done very well; they have given a very good account of themselves. Now, Sir, having regard to these factors, the time has certainly come when the Indian element in the High Courts should be increased. In the Federal Court we find that out of three Judges you are going to have two Indians. Why should not the same rule—a rule which you are going to apply to the Federal Court—be applied to Provincial High Courts also? Then, Sir, the legal position also has changed after the Government of India Act. The Government of India Act has made it easier for the Indian element to be increased—I am not a supporter of the Government of India Act—but the Act in this particular respect has made it easier for the Indian element to be increased and I will explain how. There is going to be under the Act no reservation in future for Barristers or Civilians. I am glad that there is going to be no reservation for any class of men. Therefore you cannot say that one-third should be reserved for Barristers and we have got to keep one-third reserved for Civilians. You can therefore have efficiency only as the test for appointments to the High Court. I think I am not wrong in saying that so far as the Bars are concerned, they have not always been satisfied with the quality of their Civilian Judges. I do not deny that there have been some great Civilian Judges. We had some great Civilian Judges in our own Court, but it cannot be denied that the Civilian Judge has not the same grounding in law as the Barrister or the Vakil Judge. His approach to a complicated legal question is not the same as the approach of the lawyer and when you have more efficient Bars, then you must have more efficient Benches also. Bar reacts on the Bench and the Bench reacts on the Bar. It is not to the credit of a Judge that he should be discussed in Bar Libraries. Sometimes Judges do come from the I. C. S.; they exhibit their ignorance of important branches of law and they are commented upon in Bar Libraries. You cannot stop that comment and that sort of thing lowers the prestige of a Court. Therefore, having regard to the changed circumstances, and changing circumstances, there is need for an increase in the Indian element. Reference was also made by the Honourable Haji Syed Muhammad Husain to the quality of our English Judges. Now, Sir, I am not one of those who decry the Englishman in season and out of season in this country. I know that we have had in the past some very great English Judges. In our own court we had, Sir, Sir John Edge and Sir Douglas Straight. They were great Judges. They have left permanent impressions upon the case law of this country, but here again there is no denying the fact that the quality of the English Barrister Judge from England in recent years has gone down. We are not getting the right type of English Barristers now for our Courts. We do not get our money's worth. That is the plain truth of the matter. Then, why have second class and third class men from England when you can get first class men in India? That is the simple issue which has been raised by the Honourable Haji Syed Muhammad Husain and I would like the Government to approach this question from this standpoint.

Sir, before I close, I should like to refer to the fact that after the translation of the Honourable Mr. Shah Sulaiman to the Federal Court, there will be no Indian Chief Justice in India. Sir, rumour has it that the Honourable Mr. Justice Venkatasubba Rao of the Madras High Court—I think Mr. Pantulu knows him much better than we do—(*An Honourable Member*: "He has resigned I am told.") I saw something in the paper

[Mr. P. N. Sapru.]

to that effect. The resignation has not been confirmed yet, but rumour has it that Mr. Justice Venkatasubba Rao is going to be superseded. I do not know him personally, but I have read his judgments. He is a most able Judge; he is a first class Judge. I think he is one of the best Judges that the Madras High Court has. He is one of the best Judges that we have probably in India. Why should he be ignored? If that is not racial discrimination, what else is it? I should have thought that the proper course was to appoint him as Chief Justice. He has officiated as Chief Justice of the Madras High Court. I think I am not wrong in saying that he has acted as Chief Justice.

THE HONOURABLE MR. V. RAMADAS PANTULU: Twice.

THE HONOURABLE MR. P. N. SAPRU: He has acted twice as Chief Justice and yet his claims are going to be ignored, and I believe, Sir, the appointment will go to some K. C. who probably is not making both ends meet! (*An Honourab'e Member*: "The appointment has been made—a Puisne Judge of the Rangoon High Court.") A Puisne Judge of the Rangoon High Court. Well, he may be quite competent, but I am quite sure that Mr. Rao is more competent. He is a first class Judge. We read his judgments with great pleasure and profit, and lawyers admire the skill and ability with which he handles difficult and delicate cases. Well, here is an example of racial discrimination. Because he happens to be an Indian he is ignored and there is no getting away from that fact. Sir, I think the Resolution of the Honourable Haji Syed Muhammad Husain is a very moderate one. It takes into account all the relevant factors. It is not unfair to the Europeans. It might be criticised on the ground that it is not absolutely fair to the Indians but it cannot be criticised on the ground that it is unfair to the Europeans.

Sir, with these words I give my very strong support to the Resolution moved by the Honourable Haji Syed Muhammad Husain.

THE HONOURABLE MR. BIJAY KUMAR BASU (Bengal: Nominated Non-Official): Sir, my difficulty, at the outset, is that I do not understand the scope of this Resolution. The Government of India Act lays down the constitution of High Courts and how Judges are to be recruited:

"Section 220 (3).—A person shall not be qualified for appointment as a Judge of a High Court unless he—

(*a*) is a Barrister of England or Northern Ireland, of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or

(*b*) is a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as, or exercised the powers of, a District Judge; or

(*c*) has for at least five years held a judicial office in British India not inferior to that of a Subordinate Judge, or Judge of a Small Cause Court; or

(*d*) has for at least ten years been pleader of any High Court, or of two or more such Courts in succession:"

These appointments under the Act are made by His Majesty. Sub-section (*1*) of the same section says:

"Every High Court shall be a Court of Record and shall consist of a Chief Justice and such other Judges as His Majesty may from time to time deem it necessary to appoint".

So I do not understand the request to the Governor General to increase the number of Indian Judges to two-thirds as has been asked for or any proportion, because, if I may say so with all respect, under the Act he is not competent to do so. It has to be done by His Majesty.

Then again, the proposition which was stated by the Honourable the Mover was that there was such a dissimilarity between the civil law in England and that in India. That may be. He is perfectly right when he talks about personal law. But so far as the civil law is concerned, either the commercial laws or the law of contract or the law of torts or the law of property, they are practically the same and our laws are based on the English laws on the subject. (*An Honourable Member*: "What about the tenancy and revenue systems?") Yes, the revenue law and the land laws are dissimilar—I was coming to that. But so far as other laws are concerned—the commercial law, the contract law, the law of torts—they are practically based simply on the English law.

THE HONOURABLE MR. P. N. SAPRU: How many cases of torts have we in this country?

THE HONOURABLE MR. BIJAY KUMAR BASU: I am not prepared with the statistics but there are cases in the High Courts and especially on the Original Side of the High Court of Calcutta, for example, quite a number of cases of torts is brought. It may be that in other High Courts, not having the Original Side, my friends do not come to know them. That class of cases are brought in in subordinate courts and perhaps my friends do not happen to take notice of them.

Then, Sir, the question is: Are we going to have (to quote my Honourable friend Mr. Sapru) racial discrimination on the High Court Benches? Whether a person is an Englishman or an Indian or an Anglo-Indian or anybody, so long as he is a competent and efficient man, I do not think there ought to be any question. All that I care for is that administration of justice should be pure and undefiled.

THE HONOURABLE MR. P. N. SAPRU: We have racial discrimination in the Services.

THE HONOURABLE MR. BIJAY KUMAR BASU: I am talking of the High Courts which we expect to be above such racial discrimination and should be treated as the palladium of justice.

THE HONOURABLE MR. P. N. SAPRU: We have racial discrimination in the High Courts today. Fifty per cent. of the judgeships are reserved for Indians and 50 per cent. for Europeans. If I am right, Sir, there was a statement in this House and in the other House some years ago to the effect that the policy of Government was that 50 per cent. of the judgeships in the High Courts should go to Indians. I can give the reference if I look it up but I am quite clear in my mind that there was a statement to this effect made in this House.

THE HONOURABLE MR. BIJAY KUMAR BASU: Anyway, Sir, if that is the policy I have got nothing to do with it, I am talking of the principle. Whatever the policy may be, if that is the policy, even if there is a discrimination in favour of Indians, I think the policy is wrong. (*An Honourable Member*: "You want India to be a dumping-ground for every nationality?")

[Mr. Bijay Kumar Basu.]

I do not say that. So far as the High Courts are concerned I want the best men that are available. I do not care whether he is black, brown or white.

THE HONOURABLE MR. P. N. SAPRU: It is Indians who are running the High Courts today.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): Please do not interrupt to the extent that you have been doing. Will you proceed, Mr. Basu.

THE HONOURABLE MR. BIJAY KUMAR BASU: I can understand if my friend's Resolution wanted that foreigners—I am putting it in the widest terms—should not be made Judges of the High Courts unless they were practising members of the particular Indian High Court. I can understand that. But to exclude them would be to bring into the High Courts an element of racial discrimination nobody ought to tolerate. Apart from that, Sir, if we began by having these discriminations between Europeans and Indians, where would we be led to? The next question would be, how many of the Judges should belong to a particular community and how many to another? All sorts of difficulties would arise.

Then when my Honourable friend the Mover complained that Judges who were recruited from the I. C. S. were not conversant with particular laws I think he was shooting a little wide.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: I did not say anything about the I. C. S. I spoke about Judges imported direct from England.

THE HONOURABLE MR. BIJAY KUMAR BASU: Well, you also spoke of Judges from the Services. But they have many years' experience in the district courts where they have dealt with the same laws that they are expected to deal with in the High Courts and they are people who have done it for, say, 15 years. They are naturally expected to know as much of the local laws as a practitioner in a High Court for 15 years can possibly do. Please don't think that I am an apologist for the I. C. S. I am not. But at the same time I am free to admit that I am not prepared to condemn a class even if they belong to the much maligned I. C. S. (*An Honourable Member*: "Much maligned?"). Yes, much-maligned and sometimes very unreasonably maligned. My Honourable friend Mr. Sapru mentioned about the constitution of the Federal Court. I do not think I have come across anywhere in the Government of India Act any rule that so many judges should be Indians and so many will be brought out from England or from Honolulu! Nothing of the sort. It happens now that the choice has fallen on two Indian Judges and one European Chief Justice. There is nowhere any rule on the point. It may very likely be that in the years to come, we shall have the High Courts manned entirely by Indian Judges (Hear, hear) just as at the beginning we had the High Courts manned entirely by European Judges. Mr. Sapru said that there was some such rule. But there is none.

12 Noon.

THE HONOURABLE MR. P. N. SAPRU: You will go into mourning when the High Courts are entirely manned by Indians!

THE HONOURABLE MR. BIJAY KUMAR BASU: I do not think I shall go into mourning, but there may be reason for my Honourable friend Mr. Sapru as a practitioner to do so, although he advocates with the strongest voice the other view here! Mr. Sapru further said that he did not like Judges being commented on in the Bar Libraries. He specially found that the Judges belonging to the I. C. S., when they were in the High Court, were criticised and talked of and commented on in the Bar Libraries. But has my friend found in his experience any Judge who has not been criticised in the Bar Library—any Judge who has not been commented on in the Bar Library, be he a Barrister, Vakil, Advocate or an I. C. S. Judge? After all, the Bar Libraries are places where the Advocates of different parties congregate, and in all cases one party must win and the other party must lose, unless of course there is a compromise. Naturally, the losing party will come and say that the Judge was a fool, because he did not accept his arguments. So, I do not see there was much sense in the remark that because there were comments on them in the Bar Libraries, therefore they did not know enough law. In the appointment of Judges at any rate we ought to have no racial discrimination, because that is the one department which every one would like to keep above suspicion, and I, for one, would certainly oppose this Resolution because it will bar the development of ideas of pure justice.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I did not intend to intervene in this debate but the immediate cause of the provocation is the speech of my Honourable friend Mr. Basu. There cannot be much of an argument between two Members of the House, one of whom does not feel or think like an Indian and the other who feels and thinks like an Indian.

THE HONOURABLE MR. BIJAY KUMAR BASU: I join issue.

THE HONOURABLE MR. V. RAMADAS PANTULU: You may.

THE HONOURABLE MR. BIJAY KUMAR BASU: I do.

THE HONOURABLE MR. V. RAMADAS PANTULU: I think Mr. Basu's advocacy against the Resolution is one which ought to provoke from the European Members of this House the exclamation, "Save us from our friends!". I do not think any Honourable Member of the European community who is in this House would have spoken in the strain and in the manner in which my Honourable friend Mr. Basu has spoken today. I am really sorry for the way in which he has dealt with this Resolution. He side-tracked the whole question. We are not really discussing the merits or demerits of any particular Judges of the High Courts, whether Indian or non-Indian.

THE HONOURABLE MR. BIJAY KUMAR BASU: That is what was done by Mr. Sapru.

THE HONOURABLE MR. V. RAMADAS PANTULU: No. What Mr. Sapru said, as I understood him, was that if it was a question of competency, the history of the Indian High Courts clearly showed that there were Indians in this country who could give as good an account of themselves as any European Judge.

THE HONOURABLE MR. BIJAY KUMAR BASU: I did not deny that proposition.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): Please do not interrupt.

THE HONOURABLE MR. BIJAY KUMAR BASU: I was heckled all the time.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): I prevented that too.

THE HONOURABLE MR. V. RAMADAS PANTULU: The other thing that the Honourable Mr. Sapru said was that if it was found necessary to import foreigners as Judges of the High Courts, it had not been always found that the men who were brought out were superior to Indians, and in that connection he said that some of the European Judges were inferior in calibre and were less fitted than Indians to occupy the places they did. Both propositions are true and I do not think anybody, whether European or Indian, can controvert the truth of either proposition. Sir, Mr. Basu thinks that so long as a man is competent, whether he is an Indian or European, he should be recruited without any objection. I join issue with him. I am one of those who think that even if there is no Indian who can compete with a foreigner in ability you must get on with the Government of this country with the Indians we have. That is my politics. I do feel that in every department of administration this country ought to be governed with the help of those Indians who are best fitted among Indians to occupy those places. I know it is out of tune in this House, but that is my politics.

THE HONOURABLE MR. BIJAY KUMAR BASU: Seems to be a tall order!

THE HONOURABLE MR. V. RAMADAS PANTULU: It is not a tall order. It is a modest order for any Indian to make. Keeping that aspect aside, and assuming that English Judges who are brought out to this country are equally competent with Indian Judges, is there any reason, when India can supply all the Judges that the High Courts require, for bringing out Europeans to fill these places? I think there is none. The present Government of India Act provides for four classes of persons who may be appointed as Judges, namely, (1) Barristers of England and Members of the Faculty of Advocates in Scotland, (2) the I. C. S. men who have had previous experience of three years as Judges, (3) the Advocates and Pleaders of Indian High Courts, and (4) members of the Subordinate Judiciary, who have occupied a place not below that of a Subordinate Judge for about ten years. These are the four classes from which High Court Judges can be recruited. By far the largest proportion of the Indian legal profession consists of pleaders and advocates of the present High Courts, and members of the Subordinate Judiciary. The I. C. S. men, and the Barristers of England and Scotland do not, at any rate nowadays, constitute any very large proportion of the legal profession in this country. The English element practising in the various High Courts has been fast disappearing. We have got one or two eminent men in each High Court. My Honourable friend Mr. Sapru referred to an eminent English Barrister in Allahabad. In my own province we have got Mr. Nugent Grant, a very eminent Barrister. Many of them do not

care to accept a Judgeship in the High Court. Such of them as still remain in India command a lucrative practice at the Bar and very few of them would care to accept a Judgeship. So, if you want a Barrister, you have to go to a third or fourth rate man or to another High Court where he is a Puisne Judge. At any rate, speaking with an experience of 25 years at the Madras Bar, I do not think any Barrister brought out from England as a Judge in the last two decades has proved himself to be more competent than any Indian Judge. In the High Court of Madras recently a gross injustice has been perpetrated to the legal profession in Madras. We have two eminent Indian Judges, one of whom is a Barrister, Justice Madhavan Nair, who acted as Chief Justice for some months with great distinction. The other Indian Judge, the seniormost, is Justice Sir M. Venkatasubba Rao, who acted twice as Chief Justice. Both of them are qualified under the Government of India Act to be promoted to the position of Chief Justice, in which place a vacancy is occurring very soon as our present Chief Justice is retiring after the summer vacation. But what has been done? Without taking advantage of the provisions of the new Government of India Act which permit Sir M. Venkatasubba Rao's appointment as Chief Justice, a Barrister, who is now a Puisne Judge of the Rangoon High Court, has been appointed as the Chief Justice of the Madras High Court in supersession of both these two eminent Indian Judges whose names I have mentioned. I ask Mr. Basu whether he is in a position to prove that the Rangoon import is superior to the two Madras Judges and where the racial discrimination lies? Is it with the demand made by the Honourable Haji Syed Muhammad Husain or is it with the Government of India, or Government of Madras on whose advice the King made the appointment? Of course as a lawyer Mr. Basu will argue that because the Act says that the King is to make the appointment, the Governments in India are absolved of all responsibility in the matter. But he knows that is not correct, or he ought to know it. It is on the recommendation of the Provincial Governors and sometimes of the Government of India that these appointments are made. To import them partly from England and partly from the European I. C. S. is not now necessary under the Act of 1935.

THE HONOURABLE MR. BIJAY KUMAR BASU: Not always the European element. There are Bengali I.C.S. High Court Judges.

THE HONOURABLE MR. V. RAMADAS PANTULU: That satisfies the Honourable Haji Syed Muhammad Husain's Resolution. If two-thirds are Indians even if Indians are recruited from Indian I.C.S. men, that would satisfy him. He does not discriminate between Indian and British I.C.S. men. Therefore there is no point in Mr. Basu's interruption. The Governments in India which are really responsible for the appointment of High Court Judges are observing clearly a policy of racial discrimination. In the High Court of Madras where there are 14 Judges, only six are Indians, not even 50 per cent.; and I think if statistics are taken, in every High Court the number of Indian Judges will be found to be half of the total number. The question is, are we not to take advantage of the Government of India Act in the interests of India and recruit largely from the Indian element of the Bar, or are we to keep the number of the European Judges on the old level or even increase it when there is no necessity to do so? I think the old Government of India Act in force till 1935 laid down that one-third should be Barristers and one-third should be I.C.S. men. Under that provision there was no escape from keeping the British element at a high level, but that provision has been abrogated under the

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present Act. Up to 1st April, 1937, the Government of India was under obligation to recruit Judges of the High Courts from two particular branches, one from the Service and the other from the Barristers, in both of which Europeans preponderated. That is the reason for the preponderance of the European element. Now that restriction has been taken away. Mr. Basu ought to have welcomed this Resolution as a step in the right direction, as the Government of India has liberty, if so minded, to appoint all the Judges of the High Court from the Indian section of the Bar.

THE HONOURABLE MR. BIJAY KUMAR BASU: There was no occasion for the Resolution, because the Act does not provide for the appointment of Europeans.

THE HONOURABLE MR. V. RAMADAS PANTULU: The Act does not provide, but still they are working the Act in such a way as to perpetuate the European element. That is precisely my complaint. There is no use arguing with a gentleman who does not feel or think like an Indian. I must leave him there.

With regard to the other aspect of the question of the necessity of possessing a knowledge of Indian customs and laws, I think there is a great deal to be said in favour of the view expressed by the Mover of the Resolution. I have practised before many European Judges. I think they were very intelligent men. Their training at their public schools and also as Barristers no doubt equipped them with the necessary qualifications to interpret laws, and once you explained things to them they readily grasped the point, and there was no lack of desire to do justice as between man and man. But the process of teaching a Judge on the Bench after he has assumed his responsible office is not always a very pleasant one. Indian taxpayers are paying for European Judges to learn the Indian law after being brought out here. An eminent lawyer once told us in the Bar Association that when he was citing the Mitakshara, one of the Judges asked him who Mr. Mitakshara was or rather what does Mr. Mitakshara say! On another occasion when he was referring to a certain provision of law, instead of looking at the Transfer of Property Act, the Judge was searching the provisions of the Civil Procedure Code. Judges must have some previous acquaintance with the law codes of this country. There are any number of instances in which the European Judges imported into this country, eminent men in other ways, have shown gross ignorance of Indian laws and customs. So there is every justification for the Honourable Haji Syed Muhammad Husain saying that a larger proportion of High Court Judges should be drawn from men who knew Indian law and customs. This is a case which does not require argument. I have supported the Resolution because of the fact that the words occur "Indian Judges in the High Courts of India be increased to *at least* two-thirds of the total number of the Judges of that High Court". That does not preclude the Government of India from increasing the number to cent. per cent. I want all the Judges in India to be Indians and no foreigners at all. At any rate I wish that in no case a South African should be brought out as a Judge of an Indian High Court. We may be told tomorrow that in South Africa lawyers and judges specialise in a particular branch of law with which they are very familiar, namely, how to discriminate against other people and how to promote anti-Indian

legislation! And if a specialist on that subject is wanted, you have to go to South Africa! To be serious, our self-respect requires that our Indian High Courts should be manned by Indian Judges, especially at a time when Indian Judges can give as good an account of themselves as any foreign Judge brought out to India. I would only appeal to Mr. Basu and to men of his way of thinking to cultivate a little more of the Indian mentality in their outlook.

THE HONOURABLE MR. J. C. NIXON (Finance Secretary): I did not intend to intervene in this debate and do not intend to discuss the merits of this particular question, but I would like to summarise in one sentence what I conceive to be the opinion in this matter of Mr. Ramadas Pantulu. It seems to me that he would sooner be hanged by an Indian Judge than acquitted by a European one!

THE HONOURABLE MR. R. M. MAXWELL (Home Secretary): Sir, I feel a certain amount of difficulty in speaking to this Resolution in this House because, as already pointed out by my Honourable friend Mr. Basu, the matter is not within the competence of the Governor General in Council to whom this Resolution is addressed. Although several speakers including Mr. Basu have already touched briefly on the point, I might refer to the position under the old Act and the new Government of India Act. Under section 101 of the 1919 Act all High Court Judges were to be appointed by His Majesty, and that provision is continued. But under the 1919 Act additional Judges if required in any Court were to be appointed by the Governor General in Council, and to that extent the Resolution was the concern of the Governor General in Council at the time when the Honourable Mover gave notice of it. Since the 1st April however that ground has disappeared. Similarly, under the 1919 Act temporary vacancies in the posts of High Court Judges were to be filled by the Local Government. Now that position has changed entirely under the Act of 1935. Under section 220 of the Government of India Act, 1935, the substantive provision is this:

"Every Judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years".

That is the substantive provision, that is to say, the appointment is to be made by His Majesty alone. As regards temporary and additional Judges, there are certain provisions corresponding to those in the 1919 Act, but they are not the same provisions. Under the 1935 Act, both temporary and additional Judges are to be appointed by the Governor General in his discretion. That is the whole change; that is to say, the matter is removed entirely from the purview of the Governor General in Council and the Governor General in Council, for whom I have to speak in this House, cannot be held answerable for functions which he does not and will not in the future perform. Nor is it in my province, or even proper for me, to attempt to justify the discretion used by the Governor General or the appointments made by His Majesty himself. No doubt the position resulting from the 1935 Act is one which on reflection will commend itself to this House. It is necessary in fact that appointments of High Court Judges should be removed entirely from the sphere of political influence or from any sphere of controversy and the whole idea underlying these appointments is that they should be made by an authority which is not in any way influenced by political considerations or other considerations of a local character. However, I recognise that this House has a legitimate

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interest in the subject. I do not wish to stifle the debate on the Resolution entirely, but I shall endeavour as far as I can to place a few very simple considerations before the House which may help it in forming an opinion. One thing, however, which I would bring to the attention of the House is that more particularly under the 1935 Act the High Courts are primarily an affair of the provinces, apart from the actual method of making the appointments. It might be interesting to quote to the House a remark made by the Joint Parliamentary Committee in this respect. In discussing the provisions relating to High Courts the Joint Parliamentary Committee remarked:

"The High Court is, in our view, essentially a provincial institution: indeed we seek to secure for each High Court an administrative connection with the Subordinate Judiciary of the province which we regard as of the highest importance, and which we think could not be maintained if the Court were an outside body regarded (as it would probably be) as an appanage of the Federal Government".

Therefore, although, as I say, this House naturally and legitimately feels an interest in the general question of the High Courts, we must remember that a Resolution of this kind would more nearly concern the provinces than the Federal Legislature of the future or the Indian Legislature of today, and in so far as we seek to take up a point of view implying that High Courts in the provinces are in any way an appanage, as the Joint Parliamentary Committee expressed it, of the Central Government, we are getting on to some wrong ground.

Now, Sir, this Resolution more or less reproduces a Resolution which was moved in the Council of State in 1922 by the Honourable Mr. Sethna, whom I think I am right in identifying with the gentleman who occupies the Chair today. That is another reason why I feel myself at some disadvantage in trying to controvert such a Resolution. However, I have here the account of the debate of 1922 and I find that in the course of the discussion the view was expressed—and I think accepted by the Honourable Mr. Sethna as he then was—that a proportion of 50 per cent. Indian High Court Judges would be desirable. I do not say that he limited himself to that percentage, but that figure was mentioned as one which was desirable.

THE HONOURABLE MR. V. RAMADAS PANTULU: Under the old Government of India Act that was probably what could be done. As the law then stood it was all that could be done. The law is now changed.

THE HONOURABLE MR. R. M. MAXWELL: It was pointed out even in that debate that the matter of making substantive appointments did not primarily concern the Government of India. Even then under the 1919 Act the substantive appointments of High Court Judges vested with His Majesty, but, as I have explained already, temporary and additional appointments were to be made by other authorities. So the matter could possibly be discussed in the House of that day. However, the 1922 Resolution was withdrawn by the then Honourable the Mover, because Government expressed their sympathy with the idea underlying the Resolution and promised to consult Local Governments and High Courts with a view to giving any possible effect to it. I should like to tell the House what became of that Resolution, or at least how far it has been implemented. I have got figures showing the numbers and percentages of Europeans

and non-Europeans in all the High Courts of India on various dates. I have the figures for 1910, 1921, 1933 and the present year, 1937. I find that taking permanent and additional Judges together—because there is no reason for distinguishing them, they all form part of the substantive strength of each High Court as it works—taking permanent and additional Judges together in 1910 the number of non-European High Court Judges was 26 per cent. of the total number. In 1921 the percentage was 35; in 1933 the percentage was 48 and in 1937 the percentage is 51. That is to say, in the year in which the Honourable Mr. Sethna moved his Resolution in the Council of State, the number of European High Court Judges was 65 actually—the actual number was 65—and the number of Indian Judges was 35. In the present year the number of European Judges is 47 and the number of Indians is 48.

THE HONOURABLE MR. P. N. SAPRU: Do these figures include the Chief Court and the Judicial Commissioner's Court?

THE HONOURABLE MR. R. M. MAXWELL: They do include those Courts. The House will therefore see that the actual figure mentioned in the 1922 debate has been more than realised. We have actually now got to a figure of 51 per cent. Indians on the Benches of the various High Courts. Now, as regards the future, the probabilities of the future, some of the Honourable gentlemen who have spoken to the Resolution have referred to the qualifications laid down for appointment as High Court Judge in the present Act and the old Act. As a matter of fact, the qualifications (*a*), (*b*), (*c*) and (*d*) quoted by my Honourable friend Mr. Pantulu are for practical purposes the same in both the 1919 Act and the 1935 Act though there is a minor difference in the standing required of a Barrister appointed from England, Northern Ireland or Scotland.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: May I ask, Sir, whether according to Government's information the efficiency increases on account of the increase of Indian Judges, or decreases?

THE HONOURABLE MR. R. M. MAXWELL: I have remarked already, Sir, that it is not my province to defend the actual appointments and I should regard it as highly improper for me in this House or anywhere else to express an opinion on the efficiency of this High Court or that High Court, and I think the House will agree with me that it is a thing which could not very properly be debated in this House.

But I was referring to the qualifications which are now required for appointment as High Court Judge. Although the qualifications (*a*), (*b*), (*c*), (*d*) as required by the 1919 Act and the 1935 Act are substantially the same, the crucial difference between the two Acts is the fact which has already been noticed that sub-section (*4*) of the old Act has been dropped entirely in the new Act. That section reads:

"Provided that not less than one-third of the Judges of the High Court, including the Chief Judge but excluding additional Judges, must be such Barristers or Advocates as aforesaid," that is to say, "a Barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing".

One-third of each High Court were required to be appointed from among such Barristers and another provision of the sub-section says that not less than one-third must be members of the Indian Civil Service. That provision has been entirely dropped in the new Act and the result is that

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there is nothing legally to prevent a High Court Bench from being constituted of 100 per cent. Indians. It may be interesting to the House if I refer briefly to the remarks of the Joint Parliamentary Committee on the omission of that provision. Speaking of the omission of Barristers, they say:

"We need hardly add that our acceptance of the proposal to abrogate the statutory proportion so far as Barristers are concerned implies no doubt as to the necessity of continuing, in the interest of the maintenance of British legal traditions, to recruit a reasonable proportion of Barristers or Advocates from the United Kingdom as Judges of the High Courts".

Now the Honourable Mover dwelt on the need of familiarity with social customs and Indian law as a reason for not recruiting Barrister Judges from England. It will be interesting to quote in answer to him the remarks made by the then Dr. (now Sir) Tej Bahadur Sapru, in a debate in the Legislative Assembly in 1921 on a Resolution of a very similar character to this. I think no one will question his right to speak on a subject of that sort. He said:

"Having regard to the manner in which our judicial system and our entire legal system has developed during the last fifty or sixty years, the English Barrister-Judge has even today his own value".

And he goes on to say:

"So far as the essential features of our law of property are concerned, they are closely allied to the English system and an English Barrister who comes out from England does no doubt contribute substantially to the elucidation of those intricate principles with which we have got to deal every day of our lives".

And he goes on to add:

"And he also brings out with him those high traditions of independence and freedom which we all value and which we all expect from members of the Bench in any part of India".

He goes on to remark that he fully expects the same qualifications from Indian High Court Judges, but he ends up by remarking:

"I do not think that it would be right for us, having regard to the larger interests of justice and law, to entirely dispense with the services of the English Barrister Judge".

I think I can leave my case on that point in Sir Tej Bahadur Sapru's hands.

THE HONOURABLE MR. V. RAMADAS PANTULU: We prefer the son to the father!

THE HONOURABLE MR. BIJAY KUMAR BASU: We do otherwise!

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: May I ask, Sir, if Sir Tej Bahadur expressed this opinion as a non-official Member of the Legislative Assembly?

THE HONOURABLE MR. R. M. MAXWELL: I think he was a non-official Member at the time. I was not there.

Now, Sir, as to the other change that has been made in the existing law in regard to the omission of the statutory reservation of certain posts in the High Court, the other thing that has been omitted is the requirement

that one-third of the Judgeships of the High Courts should be recruited from the I. C. S. That point again has been taken up by the Honourable Mr. Sapru who said that the Civilian Judge has not the same grounding of law as Barrister Judges and he shows ignorance of certain important branches of law. I might remark in passing there that one of the branches of law in which I. C. S. Judges are and have always been found of great assistance to High Courts is the criminal law. Their experience as Magistrates and Sessions Judges in the country has given them a grasp of the criminal law and the customs and habits of the people. (*An Honourable Member*: "The revenue laws too".) Also the revenue laws which make them of special help and assistance to High Courts. But I might again quote what the Joint Parliamentary Committee remarked on that subject. They said:

"The I. C. S. Judges are an important and valuable element in the judiciary, and their presence adds greatly to the strength of the High Courts. It has been suggested that their earlier experience tends to make them favour the Executive against the subject, but the argument does not impress us; we are satisfied that they bring to the Bench a knowledge of Indian country life and conditions which Barristers and pleaders from the towns may not always possess, and we do not doubt that the Crown will continue to appoint them".

I might remind the House that the Joint Parliamentary Committee had on it such great legal authorities as Mr. M. R. Jayakar, who is now coming to the Federal Court, Sir Abdur Rahim, the President of the Legislative Assembly——

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Are you quoting from the Report of the Joint Parliamentary Committee?—because these gentlemen were not signatories to it, and are not responsible for the opinions expressed in it.

THE HONOURABLE MR. R. M. MAXWELL: Other members were the Right Honourable Sir Tej Bahadur Sapru, Sir Nripendra Nath Sircar, and in fact the Honourable the Chairman of this House was also one of the members.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): The question is—are you quoting from the Report of the Committee, Mr. Maxwell?—because none of the British Indian delegates had anything to say in regard to the preparation of the Report. That Report was purely the work of the Members of the House of Commons and the House of Lords who formed the Committee.

THE HONOURABLE MR. R. M. MAXWELL: I am quoting from the Report of the Joint Select Committee. These names appear as Delegates from Continental British India and presumably they saw the Report.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): No, Sir. That Report was prepared after the British Indian delegates left England.

THE HONOURABLE MR. R. M. MAXWELL: Very well, Sir. At any rate, this Report is one of our chief authorities on the meaning and intention underlying the present Act and I commend it to any Honourable Member who wishes to get an insight into the principles underlying the 1935 Act. It throws a great deal of light on those principles and those who discuss the new Act and the Constitution might find a great deal of assistance also if they frequently studied it.

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Well, Sir, my conclusion then, from the facts which I have laid before the House is this. So far as the new Act stands, there is no reason whatever to suppose that the present predominance of Indians in the High Courts is not likely to continue and even to increase in the ordinary course. I have shown from actual figures the extent to which it has increased even since the last occasion on which the matter was debated in this House. It now stands at 51 per cent. There is no reason at all why that percentage should not go on increasing. But in so far as the House forms an opinion on the matter, I should like it to remember the quotations which I have just read, and which show that it is possible that the Indian Bench might not altogether gain if a deliberate policy were ever followed of excluding from it Barristers from England or members of the I.C.S. As regards the I.C.S. there is no obstacle in any case, because, the judicial branch of the I.C.S. is at the present moment very largely staffed by Indians and it is probable that in so far as the High Courts draw upon the I.C.S., in the future, the proportion of members whom they so draw will to a very large extent be Indian. In any case, Sir, I regard this Motion to some extent as a vote of no-confidence in the High Courts, because if the House is fully satisfied with the performance of the present High Courts, then there is no reason to recommend to the Governor General in Council that a certain change is essential. I was under the impression myself that if there was one department of administration or one institution at present established in this country which commanded the confidence of the Indian public generally, it was our High Courts. I was under the impression that the Indian public generally recognised the independence of view of these High Courts including their European members and that they valued the assistance on problems of Indian law which those members have been able to render. I was also under the impression that the public generally recognised and valued the determination of those High Courts to uphold everything connected with the liberties and rights of the subject and that it would be against the sense of the majority of this House—and I think of the country as a whole—to say, as is implied in this Resolution, that we are not satisfied with what High Courts are doing today. But in any case, the Governor General in Council, while in no way hostile to the spirit underlying this Resolution, must feel obliged to oppose it on the ground that if the Resolution were passed, it would be beyond the power of the Government, that is to say, of the Governor General in Council, to implement the recommendation. I hope that the House will see from the figures I have actually given and the present position under the Act that any such recommendation is really, in present circumstances, unnecessary and superfluous.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa: Muhammadan): Mr. Chairman, I have not much to say on this question because I am not intimately connected with the High Courts. The only reason why I intervene, Sir, is to say something about the speech of the Honourable Mr. Basu and that of the Honourable Mr. Maxwell. We are very grateful to Mr. Maxwell for having been generous enough to allow the House to discuss this Resolution. If he had so desired, he could have stifled discussion by taking legal objection that the matter is not primarily

*Speech not corrected by the Honourable Member.

the concern of the Governor General in Council under the present Government of India Act. Sir, he has said that there has been a great deal of progress of the Indian element in the High Courts and so we need not worry about it. As far as it goes, this is very satisfactory. We also recognise the difficulty of the Government at the present moment, when the whole thing is in the melting pot, and when new rules have come into effect. The Governor General in Council is no longer responsible for the appointment of even Additional Judges. Therefore, strictly speaking, this Resolution cannot have any effect under the present law. But what we desire to say is that it is not unnatural that Indians should desire that their proportion in the Services under the Crown in India should increase. There is no reflection on anybody in making this demand. We have not heard of English High Courts being filled by Judges either from the Dominions or other countries. This does not mean that other countries do not possess capable men. It only means that England has independence and she does not want to go abegging to get men. It shows an inferiority complex that we should always think in terms of what England can do for us and that everything that comes from England is good. I least expected that from the Honourable Mr. Basu.

THE HONOURABLE MR. P. N. SAPRU: I expected it.

THE HONOURABLE MR. BIJAY KUMAR BASU: Not disappointing!

THE HONOURABLE MR. HOSSAIN IMAM: Mr. Basu is a class by himself and I think it is forces from outside that pull him, not forces from inside. The Honourable Mr. Maxwell and the Honourable Mr. Pantulu said that there are four avenues for taking Judges for the High Courts, the Subordinate Judiciary consisting entirely of Indians, the Advocates consisting entirely of Indians, the I.C.S., in the judicial branch of which the majority are Indians. In the Bar too the proportion of Indians predominate. Even if you keep the Bar divided up between Indians and those practising from outside, the proportion that has now been proposed is not unreasonable. It wishes to give a fair deal to every one. If the Honourable Haji Syed Muhammad Husain has erred, I think he has erred on the side of moderation in demanding that only two-thirds should be Indians. Under the old Act one-third were to be Barrister Judges. Under the new Act there is no reservation. But even if you keep that proportion by means of a convention, you would not be going out of your way in trying to reach this standard. And it is very proper that today when we are discussing the subject again you should be in the Chair. Your demand has been fulfilled. We have 51 per cent. Indian Judges in the High Courts, and as the world progresses, from one step we can go higher and higher. The Government of India is trying to give us responsibility and with responsibility a greater share in the public services. There is nothing unnatural in this desire, and I specially hope that Honourable Members who are nominated here would at least in cases of this kind give greater play to their own sentiments than they do.

THE HONOURABLE SIR DAVID DEVADOSS: Irrespective of merits?

THE HONOURABLE MR. HOSSAIN IMAM: A High Court Judge, Sir, questions the merits of Indian Judges.

THE HONOURABLE SIR DAVID DEVADOSS: He said sentiment ought to prevail irrespective of the merits of the question.

THE HONOURABLE MR. HOSSAIN IMAM: The merits of a question are different from different angles of vision. If you have coloured glasses you will always look at things in that colour. If you only put on white glasses you will see things in their true colours. It is the universal practice that the Benches of the High Courts are filled by Europeans. We, Sir, on this side of the House are not as advanced as Mr. Pantulu wants us to be. He wants us to give up efficiency for the sake of inefficiency. At least we do not go so far. We say, let there be inefficiency but do not make a fetish of inefficiency. Efficiency is a thing for which there is no criterion, no touchstone where you can find out whether it is or is not. It is a matter of opinion, and with different persons opinions differ. The reason why this debate has been carried on as it has is because it is impossible for us to discuss Judges who have not come up to the mark, because, as Mr. Maxwell said, Indians have a very high opinion of the High Courts; they have a soft corner in their hearts for these Courts because it is in that place alone that we can get some show of injustice. (*An Honourable Member*: "Only show?") Well, Sir, there are some places you get real justice and some places you get show. But the fact that some of our members have been loud in their praises of European Judges shows that we are not actuated by any discourtesy or disrespect or animosity towards the English Judges. Where honour is due we are prepared to give it. But we are not prepared to give it to every person who has a white skin. If there are merits in the European Judges we will gladly accept them, but we are not prepared to say that we cannot obtain a similar competent article in India if we try to find it. Our contention is not that we do not get good enough Judges from England, but that people with similar qualifications are available in this country, and they have a prior claim to the people outside. That, Sir, I think the Government will concede. For these reasons I support the Resolution.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: Sir, I do not really know whether my friend the Honourable Mr. Basu really meant what he said. I am in doubt because as a lawyer I had expected from him better reasoning and arguments than he has given us. The weakness of his argument makes me wonder whether he was compelled to say something, good, bad or indifferent, or whether he really meant what he said.

THE HONOURABLE MR. BIJAY KUMAR BASU: I can assure my Honourable friend that there was no compulsion of any sort from any quarter.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: I did not mean to say compulsion on the part of anybody else but compulsion by his own spirit. Now, Sir, the whole of the argument of my Honourable friend revolves round two or three points. One was that under the Government of India Act it is His Majesty alone who has the power to appoint Judges and not His Excellency the Governor General in Council. There is no doubt that under both the English and Indian constitutions there are a good many things which His Majesty does. But on whose advice? On whose recommendation? Who are the people who guide the policy and make the recommendations? When an Indian Judge is appointed in India does His Majesty personally know anything about him? Does he come to investigate the merits of the person? No, it is the other people who guide the policy and make recommendations. I am much obliged to the Honourable Mr. Maxwell for expressing his sympathy with the spirit of

the Resolution. What I mean to say is that it really should be the policy which should be taken into consideration in the appointment of Judges under the Government of India Act. It is all right on paper; there is nothing objectionable so far as this matter goes; it is only when policy is formulated and put into practice that one has to see the spirit in which an Act is interpreted and acted upon. So far as my Honourable friend Mr. Basu is concerned—he has expressed his inability to support on that ground—I say that he was under no disability. This Resolution does not propose to amend the Government of India Act. It merely asks that a policy should be pursued and I am glad the Honourable Mr. Maxwell has shown that the Government of India has been pursuing it.

THE HONOURABLE MR. BIJAY KUMAR BASU: That is nowhere in the Resolution.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: My friend does not expect that everything should be put down in the Resolution. I think my Honourable friend ought to understand the spirit of the Resolution. There is nothing in this Resolution which requires the amendment of the Government of India Act and therefore it was impossible for my Honourable friend to oppose it. I am glad that the Honourable Mr. Maxwell expressed his sympathy and he was good enough to point out to the House that the policy of gradual increase of Indians in the High Courts is being pursued. But here is my Honourable friend who goes further and opposes without even expressing sympathy with the spirit of the Resolution. He wholly opposed this Resolution and on what ground? He says one of the grounds is racial discrimination. Is there anything in this Resolution which indicates racial discrimination? What this Resolution demands is an increase in the present number of Indian Judges. Now, who discriminates? This Resolution does not say that European Judges should be excluded. This Resolution does not throw any slur on European Judges. I said that before and so did the Honourable Mr. Sapru and he mentioned some very eminent names.

1 P.M.

THE HONOURABLE MR. BIJAY KUMAR BASU: Is it seriously suggested that even if we wanted a 100 per cent. there would be no exclusion?

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: That would have come if the Resolution had been sent by Mr. Pantulu; a hundred per cent. would have been demanded. But, as I say, I have put forward a very modest and moderate demand. I can now prove to my Honourable friend Mr. Basu that since 1910 the number has been doubled. There were 26 per cent. and there are now 51 per cent. and the number in 1921 was 35 per cent. I ask, is it not time that the assurance given in this House in 1922 should be reconsidered, and it would be exactly consistent with the figures, as pointed out by the Honourable Mr. Maxwell. Therefore this Resolution ought to be supported by every one. My Honourable friend in his argument blamed us for creating racial discrimination. He said that it is the principle on account of which he really opposed the Resolution and that if the policy was against the principle he condemned it. Now, which is the principle which he advocates———

THE HONOURABLE MR. BIJAY KUMAR BASU: There should be no exclusion of anybody, but only the most efficient men should be selected.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: I understood him then and I understand him now. So far as the Act is concerned,

[Haji Syed Muhammad Husain.]

there is no discrimination. But so far as the policy is concerned, the fact is that people do not get their proper share. Is that a policy which my Honourable friend applauds?

THE HONOURABLE MR. BIJAY KUMAR BASU: I was not talking of the policy at all. I made that perfectly clear.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: Simply because there is no exclusion, is he going to import men from America, from South Africa or somewhere else?

THE HONOURABLE MR. BIJAY KUMAR BASU: I am afraid I have not been properly understood.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: There is no exclusion, and therefore there should be importation from New Zealand or from Zululand. Now, what I say is this. Give them a share certainly but give a proper share. Are we going to abdicate in favour of the gentlemen from outside who may be competent? It is an Indian High Court after all. We can justly claim that in Indian High Courts you should have as many competent Indians as you can. There is no necessity of having one Englishman if you do not need him. We do not exclude him We give him one-third of the total strength.

The next thing that my Honourable friend said was that he opposed the entire Resolution because it is against justice. Now, I ask my Honourable friend to reconsider his views and see whether a demand of two-thirds is quite consistent with the progress which is being maintained from 1910 to 1937 or not. Is it unjust to ask that two-thirds of the number of Judges should be Indians? If really that is the sense of justice and if that is the type of Indians who have to go to the High Court Benches, I would rather have a man from Honolulu or South Africa or anywhere else than India itself. I would not go to the extent of saying that my Honourable friend really felt also what he said as it will do no credit to his sense of justice and that is why I felt doubtful. I hope the gentlemen on the other side will think of him when giving appointments in the Federal Court. I am really much obliged to the Honourable Mr. Maxwell for what he said in sympathy. The quotations that he gave from certain observations of Sir Tej Bahadur Sapru support my view under the circumstances. He only said that it is not advisable to entirely dispense with gentlemen from England. It was his duty to say that as a lawyer holding the brief for Government. He was putting the case of the Government. He was not expressing his personal opinion as a lawyer. To the extent that he went it supports my view. Then, my Honourable friend Mr. Maxwell said that this Resolution amounts to a vote of no-confidence in the High Court. I say it is nothing of the kind and in moving this Resolution I had no intention of expressing no-confidence in the High Court or any institution. What the Resolution asks is the increase in the number of Indian Judges. Either in the Resolution or in the speeches, it has nowhere been said that no European is competent enough to hold a Judgeship of a High Court. If you fill all the posts of Judges in the High Courts by Indians, people will still have the same confidence as they have today. If there are six Indian and six English judges and the public has

confidence, it will still continue to have confidence if there are four European and eight Indian judges. We say that however competent the Englishmen may be, and however capable they may be to administer justice, we want an increase in the number of Indian judges in the Indian High Courts which is paid out of the revenues of India. That is what we want. It is not the competence alone which is in question. As an assurance was given in 1922, if an assurance had been given to us in clear terms by the Honourable Mr. Maxwell, I would have withdrawn my Resolution. But as that assurance in clear terms is not forthcoming, I I am obliged to press my Resolution.

THE HONOURABLE MR. R. M. MAXWELL: Sir, there is very little left for me to say but I would refer to the point last mentioned by the Honourable Mover that, just as the 1922 Resolution produced fruits in the shape of an increase in the number of Indians in High Courts, so this Resolution should be expected to produce similar fruits. I have already explained to the House the difficulty of my position, namely, that it would not be possible for me to give any assurance in a matter which does not concern the Governor General in Council but I have also given the House, I hope, good reason to suppose that whatever the position may have been in the past, in the future there is no obstacle in the existing Act to the increase of Indian Judges to any percentage in the High Courts. In 1922 the Governor General in Council had, as is well known, powers of superintendence, direction and control which made it possible for him to deal with matters of this kind to some extent. Now the executive authority of the Governor General in Council is the same as the executive authority of the Federation under the new Act and the constitution of the High Courts is not a matter for the executive authority of the Governor General in Council. It is therefore clearly not possible for me to do anything about this Resolution or to give any undertaking at all. But I trust that the House and the Honourable Mover will be satisfied that the position is such that there is every reason to expect that their expectations will be fulfilled in the normal course. The only thing is that the Governor General in Council has no competence to interfere in the matter.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN: In these circumstances, Sir, I am perfectly satisfied and I do not press my Resolution.

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

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

The Council re-assembled after Lunch at Half Past Two of the Clock, the Honourable the Chairman (Sir Phiroze Sethna) in the Chair.

HINDU WOMEN'S RIGHTS TO PROPERTY BILL.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern: Non-Muhammadan): Sir, I beg to move:

"That the Bill to amend the Hindu Law governing Hindu Women's Rights to property, as passed by the Legislative Assembly, be taken into consideration".

Sir, the Bill was introduced in the other place by Dr. Deshmukh and he is to be congratulated on having successfully piloted a Bill of far-reaching importance for the women of this country.

THE HONOURABLE MR. BIJAY KUMAR BASU: Hindu women.

THE HONOURABLE MR. P. N. SAPRU: Yes, for the Hindu women of this country. It is a measure of far-reaching consequence for Hindu society and Hindu women. Sir, the Bill will to some extent improve the position of Hindu women. One of the tests by which we measure the progress of a society in the modern world is the status which that society assigns to women. There was a time when Hindu women had a good deal of freedom. They had, at one time of our history, some economic independence. But woman's position in India deteriorated when decay set in in Hindu society. Sir, one of the more hopeful features of the Indian renaissance through which we are passing is the awakening among our women. With increase in education has come a demand for the recognition on the part of women of their individuality, and their personality Founded as our society is on the possessive instinct in life, it is not surprising that our women are claiming now a greater measure of that economic freedom without which it would not be possible for them, in the world constituted as it is today, to develop the uniqueness of their own personality. Sir, I am myself a strong femininist and I would like women to have equal rights and opportunities. I recognise, however, that progress towards this goal can only be, in a society constituted as our society is, a gradual one. We have to fight prejudices which have become as it were part of our mental structure and it is perhaps only through gradual stages that we shall be able to reach the goal of an emancipated womanhood. This, Sir, is what I have to say by way of answer to those who might think that the Bill does not go far enough.

The Bill, Sir, I would say, is a small step in the direction of greater freedom for women. Sir, the present position, as the House knows, is that in a divided Hindu family and in cases of separate property, women can claim a share when sons or brothers partition the property. Women get on partition what is known as a limited estate. But, Sir, on the death of the husband, the widow does not become a coparcener. She is entitled, if the family happens to be a joint family, to maintenance. She becomes entitled to a share in the property if the family is a divided one and the sons wish to divide the property, but she has not the status of a coparcener. The effect of this Bill will be to make the widow a sort of coparcener on the death of her husband, in other words, she would be able to claim the coparcenary right of partition. That is the most important right which a coparcener has and the Bill gives her that right—the right of claiming a partition. Therefore, upon the death of the husband, the widow would become like any other male coparcener. No doubt, she has the right of maintenance today. No doubt she gets a share when her sons partition the property. But, as I just pointed out, she has not got all the rights of a co-parcener, and the purpose and object of this Bill is to give to women co-parcenary rights. The nature of the estate the widow will get is not affected by the Bill. The estate she will get will be a widow's estate and will remain subject to all the limitations of a widow's estate. The Bill affects parties governed both by the Mitakshara and the Dayabagha schools of law. But of course it has particular reference to those who are governed by the Mitakshara system of Hindu law. The object of this Bill is therefore a limited one. It is to remove this defect in Hindu law as we know it today. If this Bill becomes law women will get an independent right of enforcing partition. In other words, the

mother will get an equal right with the sons of enforcing partition. Sir, rationally, nothing can be said against the proposals which are to be found embodied in this Bill. These proposals, Sir, had the support in other House of the Government. They had the support of a very, very eminent lawyer. I am referring to our respected Law Member, Sir N. N. Sircar. I had hoped that he would be here to help us in piloting the Bill. But we know, Sir, that he has not been well and we regret his absence. I feel, Sir, that he would have given me much help if he had been present here. But he has not been very well. We are grateful to him for the great support that he has given to this Bill in the other place. Now, Sir, as I said, nothing can be said against the proposals which are found embodied in this Bill. I will not argue the case for the change because I think there is nothing that can reasonably be urged against it. I will wait to hear what the opponents of this Bill, if there are any, have to say. But there are just one or two criticisms that I might answer by way of anticipation. It may be said that the change that is proposed in the Bill is against Hindu religion and Hindu law. My answer to this line of criticism is this. First of all, so far as I am concerned, I maintain the view that religion has nothing to do with social laws. Religion is a purely personal matter which regulates our relations with the Maker of the universe. Law and religion are not the same. They become more and more distinct with the advance of society. Therefore the argument that this law is against either the letter or the spirit of Hindu law makes no appeal to me. Secondly, my answer to this line of criticism is that Hindu law is an evolving and developing process. The capacity of us Hindus to adjust ourselves to changing conditions is one of the merits of our society. We do not look to any particular revelation or to any one Law-giver as our guide. We Hindus believe in a continuous revelation. Therefore, I would say that there is nothing in the Bill which goes against either the letter or the spirit of Hindu law. I do not propose to formulate any legal conundra. The Bill is a simple one and I would ask the House to look upon it as a measure of social justice. I would make an appeal to the more orthodox Members of the House. I would say to them that world conditions are changing, that we are entering a modern world, and it has been the great glory of Hinduism, it has been the great glory of Hindu society that it has shown itself generally capable of adjusting itself to changing conditions. Our women demand the recognition of their status in life. They want a greater measure of economic freedom. Are we going to deny them this greater measure of economic freedom? Are we who want in the political world freedom for our country going to be unjust to our women, to our wives, to our sisters, to our daughters? That is the simple issue that is raised by this Bill, and I have confidence in the sanity of the orthodox community. I am quite sure that the orthodox section of the Hindu community will be just as prepared to support this Bill as we on this side of the House are. We Hindus have shown great capacity in the past to adapt ourselves to our environment, and I have no doubt that it is this capacity which has preserved us from destruction. I would also make an appeal to my Muslim friends. Fortunately they belong to a society which knows what social justice is. Their laws in the matter of women are more humane than our laws, and I am confident that we shall have their support. I would make a similar appeal to my European and Christian friends. We should like to have their support. They have supplied us with new ideals. May it be given to them to help us to realise those ideals?

Sir, with these words, I move.

THE HONOURABLE MR. BIJAY KUMAR BASU: On a point of information, Sir. Clause 3, sub-section (*1*), says "devolve upon his widow along with his lineal descendants, if any, in like manner as it devolves upon a son". In Malabar no property descends to lineal descendants at all, and if a widow is left she will not share it with the lineal descendants because the law of succession is the sister's sons. I just want to find out how that is affected.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: If my Honourable friend Mr. Basu had any amendment to make there was the Bill before him and he ought to have put in an amendment. If my Honourable friend was not satisfied he ought to have put in an amendment, and then the House would have been in a position to deal with it.

THE HONOURABLE MR. A. DEC. WILLIAMS: I have only very briefly to state the attitude of Government to this Bill. Government do not propose to participate in the debate. They will support the Bill in the form in which it came from the Legislative Assembly, but they are not prepared to accept any last-minute amendment to the Bill.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa: Muhammadan): Mr. Chairman, I intervene in the discussion of this Bill just to make clear the position of the Muslim Members in this House. We are very grateful to our Hindu colleagues of this House that in the last Simla session when a Bill affecting our own religion alone was before the Council they very generously promised to abide by the decision of the majority of Muslim Members. It was a conventional thing done voluntarily. By legislation we cannot deprive any part of the House from exercising its vote, but a convention can grow up that in certain things a certain class of people who are primarily concerned with it should have complete liberty of action, and that whatever line of action they decide to take should have the general support of all other communities. In accordance with that convention I think we would not be keeping the spirit of the convention if we were in any way either to oppose or support this measure. But we can say this that every measure which has for its object greater social justice will have the entire sympathy and support of all sides of this House. My only regret is that this Bill does not go far enough. I do hope that in the other House people will be more venturesome and bring in a Bill which will bring Hindu women at least into line with the women of Islam.' Another thing to which I wish to give particular emphasis is that every measure which wants to give rights to Indian people, whether male or female, should not be objected to because it does not provide for every imaginable case. The point which the Honourable Mr. Basu has made is a very pertinent point. Probably this question does not arise in Malabar, because the question of injustice to women is non-existent there. It is more or less a question of injustice to men. Probably the Honourable Mr. Basu will bring forward a Bill to equalise the position of men with that of women. Sir, after having stated that we, Muhammadans, have every sympathy with the motive of the Bill, I resume my seat.

THE HONOURABLE MR. P. N. SAPRU: Sir, I am grateful to the Honourable Mr. Williams and the Honourable Mr. Hossain Imam for the support that they have given. I have nothing more to say. Sir.

*Speech not corrected by the Honourable Member.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): Motion moved:

"That the Bill to amend the Hindu Law governing Hindu Women's Rights to property, as passed by the Legislative Assembly, be taken into consideration."

The Motion was adopted.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): We will now proceed with the Bill clause by clause.

Clause 2 was added to the Bill.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): Clause 3.

THE HONOURABLE MR. BIJAY KUMAR BASU: Sir, I am very sorry that I was misunderstood. When I asked for information it was not that I wanted to propose any amendment at all. As a matter of fact when I read it, I just thought if any explanation would be forthcoming; perhaps there was a debate about it in the other House and we might have been enlightened about it. I simply wanted information. There was no question of amendment at all.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That the Bill to amend the Hindu Law governing Hindu Women's Rights to property, as passed by the Legislative Assembly, be passed".

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I rise to express the gratitude of a large section of the Hindu community to Dr. Deshmukh for having piloted this Bill successfully through the Assembly and also to my friend, the Honourable Mr. Sapru, for having taken up this Bill in this House. The position of the Hindu widow at present is very lamentable, and though this measure has not gone as far as it should have gone to give her legitimate rights in a joint Hindu family, it has done something for her. In the other place it was said that the original Bill, which was more progressive, was cut down and 15½ annas had been taken away and only half an anna had been left. Even the half anna is not worth neglecting. The Bill gives to the Hindu widow the right to claim partition in a joint family property and to separate the share of her husband and to enjoy it as a Hindu widow for her life. That is a great concession, especially because Hindu co-parceners, though they may become separate, do not usually do so and are not in the habit of making wills. Under the Hindu Law as it stands it is open to a co-parcener by unilateral act to declare that he becomes separate from his co-parceners, without the concurrence of the other co-parceners, and to become separate and to execute a will bequeathing his property to his widow. Very few people take advantage of the provisions of the Hindu Law and therefore the result is

[Mr. V. Ramadas Pantulu.]

that Hindu widows are left in a very pitiable condition. Therefore this Bill really advances the position of Hindu women to a considerable extent. I do not think there is anything revolutionary in this Bill. I may draw the attention of the House to the two sub-clauses of clause 3. Sub-clause (*1*) of clause 3 deals with the system of Hindu law which is governed by Dayabagh, which is prevalent in Bengal, and sub-clause (2) with the school called Mitakshara school which is prevalent in Madras—it speaks of schools other than Dayabagh. The most predominant school is Mitakshara. I may tell the House that Dayabagh and Mitakshara are merely schools which are based on one original text, the same Smriti, only the commentators are different. The commentary by one author is called Dayabagh and by the other author is called Mitakshara. The same original text is interpreted in two different ways in Bengal on the one hand and Bombay and Madras on the other. There is nothing in the original Smriti which will justify any Hindu saying that this Bill is a revolutionary one. We are trying to bring the law in Madras, for instance, into conformity with the law in Bengal. Therefore it is really a question of accepting one commentator as against the other commentator. Though this Bill is only a small measure of relief to Hindu women, it is a welcome measure. I have no doubt that in course of time as public opinion is educated in favour of giving larger rights to Hindu women, more progressive measures will be introduced in this House and the other House and will be passed without much difficulty. The beginning is a very good beginning, and I have said that my object in speaking at this stage is really to congratulate the author of this Bill and thank him for the help he has rendered to Hindu society.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Sir, I should not like to give a silent vote on this occasion. I am not satisfied with this Bill. I should have liked it to go further. For instance, I should have liked that the property which a woman inherits or the interest which she acquires in property should be made absolute and that she should become the owner of the property. Unfortunately, owing to the opposition of the vested interests the Bill was so whittled down in the other House that we are compelled to take it as it is or to go without any law which would give the slightest relief to women. I have therefore no alternative but to vote for it. I am, however, glad to know that the Honourable the Law Member stated in another place that he himself would have liked the Bill to go further. I hope, therefore, that before his term of office comes to an end, he will help in putting through another measure which will give further economic rights to women.

With these words, Sir, I heartily support the Bill before us.

THE HONOURABLE DEWAN BAHADUR SIR RAMUNNI MENON (Madras: Nominated Non-Official): Sir, I have no desire to take part in the discussion on this Bill. My only object in rising is to get one particular point cleared, if I may get it cleared, and that is this. I should like to know whether this Bill would apply to the Marumakkattayam Law of Inheritance, in regard to which there is a special Madras Act, Madras Act No. XXII of 1933, the Madras Marumakkattayam Act. Special provision is made in that Act for the devolution of intestate property. I should like to know whether this Bill, if passed, would apply to the Marumakkattayam Custom on law of inheritance.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: May we ask as a special case that Mr. Pantulu, who is fully familiar with the circumstances of the case, be allowed to answer this question?

3 P.M.

THE HONOURABLE MR. RAMADAS PANTULU: I think, Sir, there is nothing in this Bill which will justify the apprehension that it abrogates the provisions of the Madras Act of 1933. Section 3 (*1*) applies to cases "When a Hindu governed by the Dayabagh school of Hindu Law dies intestate" and "when a Hindu governed by any other school of Hindu Law or by customary law dies intestate" possessing separate property. The clause is only dealing with the textual and customary laws of Hindus and is not dealing with any particular Legislative Acts. There are particular Acts which deal with succession not only in Madras but also in some other Provinces as well. They are not affected by this Bill. Similarly section 3 (*2*) applies "when a Hindu governed by any school of Hindu law other than the Dayabagh school or by customary law dies intestate" as a member of a joint family. Therefore that sub-section also deals only with the textual law and the customary law of Hindus and the whole Bill is so framed as not to touch any particular law governing succession enacted in the provinces by means of local Acts.

THE HONOURABLE MR. P. N. SAPRU: Sir, I am grateful to the House for the support that it has given to this Bill. The Honourable Mr. Kunzru said that he would have liked this Bill to go further. I would have liked it myself. I would have been glad if the property which a woman inherits had been made absolute. I agree that the property which a woman inherits under this Bill will not be absolute. It is, however, not possible for us, having regard to the social prejudices of the country, to go further and therefore, Sir, while I would say that I agree with Mr. Kunzru in hoping that it might be possible for the Bill to be improved at some future time, I would also say that I want the Bill even as it is because it represents an improvement over the existing position.

Sir, I am grateful to the Honourable Mr. Ramadas Pantulu for coming to my help in answering the question that was raised by Sir Ramunni Menon. I would also say, by way of answer to Sir Ramunni Menon, that in the Assembly when this Bill was discussed there were Malabar Members and I think that if there was any substance in his point it would have occurred to them and they would have raised some objection.

THE HONOURABLE SIR RAMUNNI MENON: I am not aware that there is anybody in the other House who is governed by this Act. All the people in Malabar are not governed by this law

THE HONOURABLE MR. P. N. SAPRU: Well, Sir, I do not know what the position of the Madras Members is. Still, my answer would be the same as that given by the Honourable Mr. Ramadas Pantulu. This Bill is not concerned with special statutory enactments. I am quite sure that the sympathies of Sir Ramunni Menon are with this Bill. He always stands for justice for women and I think, Sir, that the question put by him was merely a legal conundrum.

Sir, I move:

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

The Motion was adopted.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan): Sir, I beg to move for leave to introduce:

"A Bill to provide for jury trial in sedition cases".

"Historical writers"—as I once quoted before, says D. G. E. Hall in his English constitutional history—"are probably amply justified when they aver that the use of the jury system; which means the co-operation of ordinary men in the securing of justice, was the real beginning of self-government amongst us".

Now that self-government is alleged to have been introduced in this country it is time that we should have the law of sedition so amended as to make sedition cases triable by jury. Offences against the State have been made triable by jury except sedition. The reason for this was perhaps that the prosecutor in such cases happens to be the judge, particularly in India where there is no separation of the judicial from the executive functions in criminal trials. The offence of sedition, Sir, is very difficult to define and has to be differently interpreted in different High Courts from time to time.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): It is not necessary for the Honourable Member to make a long speech in asking for leave to introduce a Bill. Standing Order 68 says:

"If a motion for leave to introduce a Bill is opposed, the President after permitting, if he thinks fit, a brief explanatory statement from the Member who moves and from the Member who opposes the Motion, may without further debate put the question".

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: Then I move, Sir.

The Motion was adopted.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: Sir, I introduce the Bill.

RESOLUTION *RE* PROHIBITION OF THE IMPORT OF VEGETABLE OIL, *VANASPATI*, ETC., INTO INDIA.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I rise to move the following Resolution:

"That this Council recommends to the Governor General in Council that:

(*a*) the import into India of solidified vegetable oil, *vanaspati* and other similar products be entirely prohibited unless they are given such permanent harmless colouring as may readily distinguish them from and render them unfit for readily mixing without detection with natural pure ghee;

(*b*) the manufacture in India of solidified vegetable oil, *vanaspati* and other similar cheap products be entirely prohibited unless they are also permanently coloured in the same way as suggested in clause (*a*) for imported articles, in order to render them unfit for readily mixing without detection with natural pure ghee."

Sir, to start with I might mention that I have moved similar Resolutions in past years in this House and I might say, Sir, that when I had the privilege of moving this Resolution on the 27th February, 1929, in this House, although that Resolution was slightly different from this, it had the approval of this House and it was passed and adopted. Since then, Sir, the number of factories for the manufacture of *vanaspati* ghee has

grown up in India and they have very nearly replaced the import of *vanaspati* ghee. As far as my information goes, we have 7,35,00,000 of milch cattle in India, and in case we take half that number as being under milk, we are producing 17,79,000 maunds roughly of pure ghee. Sir, I heartily thank His Excellency the Marquess of Linlithgow for the kind interest that he is taking towards improvement and research in the dairy produce of India. His Excellency was good enough to appoint Dr. L. C. Wright, Director of Hanna Dairy Research Institute, to report as regards the improvement and the betterment of Indian dairy products. He will be shortly submitting his report to the Government of India. As far as my information goes, when he was travelling in the rural areas, the agriculturists complained to him bitterly as regards the adulteration of vegetable compound with their pure ghee, which affected their income adversely.

Sir, I do not want to repeat the arguments that I put forward in favour of this Resolution in my previous speeches. But in order to refresh the memory of this House, I will repeat a few of the salient facts. Some time back, Sir, I put a question in this Honourable House as to why pure ghee was being used in rationing the Indian Army. His Excellency the Commander-in-Chief then replied that as *vanaspati* was practically devoid of useful vitamins and in order to keep up the strength and physique of the soldiers and the sepoys, it was necessary that pure ghee should be rationed. He said that for that reason they were not using adulterated ghee. Before the war, the demand for pure ghee from the army was 28,000 maunds. During the war, this quantity rose to as much as 9,00,000 maunds a year. When these 9,00,000 maunds of pure ghee was required for the army, India could only find 5,00,000 of maunds, and the balance of 4,00,000 was imported from Persia, Mesopotamia, and other countries. Now, Sir, I understand, the annual demand of the army for their rationing the Indian Army is 70,000 maunds a year. The total consumption of pure ghee, as far as my information goes, is 20,00,000 maunds a year in our big cities. India produces, say, 17,79,000 maunds of ghee. So, the difference of about 3,00,000 maunds is being met by adulteration of *vanaspati*. Sir, I might mention that in 1928-29, the import into India of *vanaspati* ghee and similar vegetable products was of the value of Rs. 1,26,00,104 and the quantity was 31,105 tons. That quantity dwindled down to 4,181 tons in March, 1932. We find that there has been a further dwindling in this figure and the value of imported *vanaspati* has fallen down practically by over a crore of rupees. The value of *vanaspati* ghee is practically nil as far as its food value is concerned. An experiment was made at Lahore by the Chemical Examiner, Captain Thomas, I. M. S., on cats and kittens, and his report said that those cats and kittens which were fed on *vanaspati* ghee grew weak and lean while those which had pure ghee improved in physique and strength. Sir, the Honourable the Minister in charge of Local Self-Government in the Punjab, in 1929, made certain observations in the Punjab Legislative Council, and for the information of this House, I will again quote them, though I quoted them in speaking on my Resolution on the 27th February, 1929. The then Minister for Local Self-Government in the Punjab, Sir Feroz Khan Noon, who is now High Commissioner in London, said:

"If you wish to find out as to what the Indian mind feels about the effect of *vanaspati* ghee you have got to go to the streets and see the labourers who eat simple *chappatis* and *dal* and have nothing more to eat. You will find there are many in that class in this country with whom natural ghee is the only stuff which gives them

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the necessary vitamins. If you cut ghee out of their *dal* or out of their *chappatis*, you will find that their food will not be as nourishing as it ought to be.

It has been argued that *vanaspati* is not directly injurious. I certainly agree that it is not injurious, as arsenic, for instance, is injurious. On the other hand *vanaspati* has not got that effect. It has this effect, that it greatly reduces a man's vitality and the effect of that article of food in the long run is, I think, as injurious as that of any poison. I have been trying to study this question as minutely as possible. I have thought of the question of prohibiting the import of *vanaspati* into this province. I am sorry to say that to prohibit the import of this article into the provinces was not within my power and not within the power of this Government. Then I further went into the question of requesting municipal committees to prohibit the sale of this article within their limits and of prohibiting it being disembarked at certain railway stations. This method again was found defective, because a man who wishes to cheat the public need not necessarily detrain *vanaspati* ghee at a particular railway station where there is a municipal committee. For instance in the case of Lahore he can easily detrain at some 10 or 15 miles out and then bring it into Lahore by motor lorry. So even that method cannot be effective".

In another place he says:

"With the support of your speeches in this Council we at once proceeded to address the Government of India on the subject and tried to bring about some sort of legislation or executive order by which all *vanaspati* produced in India or imported into India should be coloured in such a way that if it is mixed with real ghee it is spotted at once".

Then he also said again:

"It is my intention as well to keep the danger away as far as possible".

Sir, the result was that the Provincial Governments and Legislatures passed certain legislative measures, but in practice those Acts have made no effect on the adulteration of ghee. In the first place small committees and notified areas are not rich enough to employ a proper analyst. An analyst costs not less than four to five hundred rupees a month and they cannot afford that salary. The result is that the only places where that law can apply in practice is within the limits of the big towns. Now, in the big towns there are a few prosecutions in a year, and those people who are defrauding the public by adulteration of ghee go on cheating. I asked one of them who was punished why he sold mixed ghee and got convicted and thus dishonoured. He said, "During the year I am profiting by so many thousands of rupees and even if I am convicted and fined Rs. 500 it pays me to go on adulterating ghee". So, so far as the practical side of these measures goes, we find no practical relief. I think it is the duty of the Government to see that the public is not cheated in the way it is. In 1928 I suggested that some sort of harmless colouring should be given to this artificial ghee. Many years have passed since that Resolution was passed in this House, and no information has been given to the Central Legislature as to whether or not the Government has succeeded in finding a suitable harmless colouring which may make detection easy. *Vanaspati* factories in India are increasing, which shows that the cheating is also on the increase. Now, the cheating is done in the ghee producing centres. First people started mixing *vanaspati* with ghee in the various markets (*mundis*), but now the evil has spread to the pure ghee-producing centres, with the result, so far as the Punjab is concerned, it is very very difficult to find pure ghee in markets. The Punjab and the North-West Frontier Province, as the House is aware, regard ghee as a necessity. These people do not use oil so much as Bengal, Bihar, and certain other provinces do. So it is these provinces who are suffering worst from the

vegetable oil products that are being forced upon them. These two provinces are the main recruiting centres for the army, and as His Excellency the Commander-in-Chief then observed, it was not in the interests of the strength and physique of the Indian sepoys that they should be given adulterated ghee. I find now and even the Recruiting Officers find that the physique of the people in the Punjab comparatively has gone down. (*An Honourable Member*: "Only on account of ghee?") Mainly on account of ghee, yes. And therefore I consider that it is essential that some sort of real protection should be given to the masses against this invasion of adulterated ghee. I might mention for the information of this House that the present price of a tin of pure ghee which contains about 18 seers or 36 lbs. is Rs. 18, while the price of a tin of vegetable compound containing 19 seers or 38 lbs. is only Rs. 7. I would say further that if no suitable harmless colouring has yet been found by the research chemists of the Government, then artificial ghee or *vanaspati* should be mixed with *sarson* oil or with *til* oil, *moongphali* oil. If 10 per cent. of these oils are mixed with the *vanaspati* it will not materially affect the value of that vegetable ghee as far as its vitamin content is concerned, though I hold myself that vegetable ghee has no useful vitamins at all. But if this 10 per cent. of these oils is mixed it will add nutritious value to the vegetable compound and it will enable the masses to detect that ghee either by taste or by smell.

Sir, the Government when I moved this Resolution last held that they did not want to stop the import of *vanaspati* ghee because I suggested that a prohibitive import duty be imposed upon it. Now, of course, there is no question of an increase in import arising. That has been reduced by over a crore of rupees a year. The local vegetable factories are practically meeting the demand for *vanaspati* in India, and in every *mundi* you will find that so many thousands of tons of this *vanaspati* comes in for adulteration with pure ghee to various places of pure ghee production. I think, Sir, that Government is failing in their prime duty to protect the health of the people by allowing this stuff to be mixed. In Bengal, as my Honourable friend Mr. Basu interrupted me, I found while I was there that even the fat of snakes was being added to pure ghee. That was the fact which the ghee merchants themselves admitted there. They said that fat of pythons was being mixed with ghee. However, as Bengal is generally an oil-consuming province, perhaps they do not realise the admixture as much as those provinces do whose staple food is pure ghee. I therefore submit that my proposal is a sound one and it is the paramount duty of Government to see that their subjects do not suffer in health. Sir, a number of Indian States have entirely prohibited the import of this *vanaspati* ghee into their various States, and they are adding in number. For instance, Sir, I might cite a few States which have already taken such measures, and they are: Jammu and Kashmir, Porbundar, Navanagar, Junagadh, Wadhwan, Palitana, Rajkot, Idar, Soyia, and so on. So far as the production of pure ghee per province is concerned, I have no up-to-date figures, but the figures which I prepared some time ago prove that in Central India as much as 1,00,000 maunds of ghee was produced every year, and Central India itself consumed only 10,000 maunds. So there was a surplus in Central India of 90,000 maunds. Gwalior State, which is one of the biggest in Central India, was the first in the field to absolutely stop the import of artificial ghee. I therefore commend this Resolution to the favourable consideration of this House. I have divided it into two parts

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(*a*) and (*b*), because the Government may say that from 1st April Provincial Governments have been given financial autonomy and they can look after themselves. Therefore in case Government are unable to accept part (*b*), they ought to accept part (*a*). I therefore submit that my Resolution may be put in two parts to the vote.

With these remarks, I commend this Resolution for the favourable consideration of this House.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I should like to say a few words. Between the years 1925 and 1929, vegetable ghee was a hardy annual and I remember to have myself participated in the debate on that question in 1929. Our thanks are due to the Honourable Rai Bahadur Lala Ram Saran Das for the persistence with which he is pursuing this question. In the old days there used to be only one clause to his Resolution to prohibit import. At that time all the vegetable ghee was coming from Belgium and Holland and there were difficulties in the way of the Government of India imposing prohibitive import duties on those imported articles, for the reason that those countries supplied articles of food to England which did not want to antagonise them; my Honourable friend now finds that imports have greatly decreased, because it is now manufactured in India as well; and therefore we find today two clauses to the Resolution instead of one as in the old days.

Sir, on the question of the prohibition of importation or the manufacture of vegetable ghee, I am not so sure whether, on its own merits, its use ought to be prohibited. It may not be nutritive, but in the absence of evidence that it is deleterious to health, and unless medical opinion favours the view that the consumption of vegetable ghee is harmful, there is no case for prohibiting its manufacture. If medical opinion favours the view that it is bad to health then there is a case for stopping its manufacture. On the previous occasion when I was in this Council some eminent medical men—the Surgeon-General of Madras—spoke on it and said that it was not deleterious to health. It may not be quite nutritious, it may not be quite as good as ghee as an article of consumption. Still poor people who cannot pay for the ghee may well like to have something for flavour, though not for nourishment. For example, in the villages which I have visited, I know people who manufacture ghee sell their ghee because it fetches a good price and buy *vanaspati*, because it is cheaper, for the sake of flavour or for frying some vegetables and so on. Therefore it is a question of economics with the poor people. But I support the Resolution for the reason that this particular article is being largely used for adulterating pure ghee. My objection is not to the manufacture of this article, but to its being used in adulterating with it genuine ghee. As my Honourable friend has pointed out, it is a very dangerous article. In scientific language it is colourless, tasteless and odourless, and these qualities make it particularly suitable for adulteration. Therefore, I think one direction in which the Government of India and the Provincial Governments can help us in this matter is to make the laws regulating adulteration of food articles more stringent and also calling upon the local authorities and other people connected with the detection of adulteration to be stricter in punishment of the offences. My friend Rai Bahadur Lala Ram Saran Das may take some steps to address Local Governments and also local and municipal bodies to be more watchful in the matter of adulteration. That

is the suggestion I would make. To punish adulteration no doubt some fine is imposed under the various Provincial Acts. My friend has urged that the fines have not proved deterrent. The illicit gain made by the adulterators is much more than the fine they are called upon to pay, like the fine in the case of marriages under the Sarda Act in my part of the country. The dowry is fixed at such a level as to include the fine also if parents are prosecuted for offence under the Sarda Act—so much dowry plus the fine which will be imposed by the magistracy. It is like that—not deterrent. Therefore there is a case for examining the Provincial Acts in regard to adulteration of articles of food and to take proper steps to see that genuine ghee is not adulterated with this artificial ghee.

On the question of the permanent colouring, I do not know whether any research has been conducted in the Departments of the Government of India. We will be glad to have some information on the question whether this particular subject has been referred to any of the research departments of the Government, either the Agricultural Research Council or any other research body. In any case I would advise my friend, the Honourable Rai Bahadur Lala Ram Saran Das, to offer a prize for one who finds a material which will give permanent colouring to this without affecting health. In some instances I know when research is not very encouraging the offer of a prize to scientists who carry out research in such matters is productive of good results.

These are some of the observations I have to make. I have entire sympathy with the Resolution so far as it purports to fight the present practice of adulterating ghee. I am not, however, quite in sympathy with the recommendation that its manufacture in this country should be prohibited. I know many kinds of seeds which we used to export to countries which manufactured vegetable ghee because they were thought useless, have now been a source of profit as vegetable ghee is manufactured in India. From that point of view also I am not in favour of prohibiting its manufacture but I am strongly in favour of the Provincial and Central Governments taking suitable action for the prohibition of its import and for prevention of adulteration.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member): Sir, my Honourable friend Rai Bahadur Lala Ram Saran Das told the House that this is not the first time that he has brought up this question. I think I am correct in saying that this is the fifth time that he has brought up this question. The first Resolution was moved so far back as 1926. This is a striking example of perseverance and patience in regard to a matter which so deeply affects the health not only of the people of the Punjab but of the people in other provinces. I think it would be superfluous for me after the elaborate description of the virtues of pure ghee that my Honourable friend has given to say anything more about it. I think there is no question in this House that pure ghee has a value of its own as a food product in India, but I should like the House to consider what the Resolution demands. The first part says that the import of certain vegetable products into India should be prohibited unless they are coloured in such a way that they cannot be used for adulteration. Then the second part says that the manufacture of these articles should be entirely prohibited unless they are permanently coloured in order to prevent adulteration. Well, I think my Honourable friend will agree as regards the second part that since the 1st April this is a matter which is now entirely within the powers of Local Governments. If, for instance,

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the Government of the Punjab are satisfied—and I believe that there is a factory for the manufacture of this kind of oil at Lyallpur—well suppose my Honourable friend is able to convince the Punjab Government and the Punjab Legislature that it is necessary to prohibit the manufacture of this particular article at Lyallpur unless it is coloured in the manner that my Honourable friend desires it should be, it is now entirely within the competence of the Local Government to do so. I hope the House will agree that, when the Local Government has now got the power to take such action as it desires, it is unnecessary now for this House—nor has it got the authority—to issue any directions to the Local Government. I do not quite understand now what my Honourable friend's difficulty is as regards part (*b*) of the Resolution in having his scheme carried out in the Punjab. During the course of his speech my Honourable friend has not explained to the House why it is that he has brought part (*b*) to be discussed here when I believe he agrees that the Punjab Government has got complete authority to take such action as it likes, to take the action which he has described in part (*b*) of his Resolution, or any other action in regard to the manufacture of this particular article.

Now I come to part (*a*) of the Resolution and the House is perfectly entitled to inquire whether action more or less on those lines can only be taken by the Centre or by the Provinces. I understand that the constitutional position is that, if a province considers that the entry of a product of this kind is likely to be used for adulterating a food product like ghee, it is entirely open to the Local Government to regulate the entry of that article or to lay down rules that when it is sold it should be coloured in a particular manner. Therefore, so far as action by a particular Government is concerned, part (*a*) and part (*b*) are more or less on the same footing. It is quite open to the Punjab Government as far as I understand the constitutional position to make regulations to see that this imported article is not used for the purposes of adulteration. That being the position, I think now, after the passing of the new Act, the forum for a discussion of this kind is now the Local Government concerned and it is there that action can properly be taken. It would not serve any useful purpose if I were merely to say that I am prepared to forward a copy of the debate to Local Governments. I suggest in all sincerity that the real thing needed is to get the Local Legislatures interested in the subject and if they are really impressed with the importance of the action which my Honourable friend has been persistently advocating for a number of years, I do not see any reason why action should not be taken. I do not for a moment wish to dispute the importance of a pure supply of ghee nor do I desire to say that this particular vegetable product is not used for adulteration. I am saying that, assuming that all the facts stated by my Honourable friend are correct, my only difference with him is that the action on the facts which he has suggested is now for the Local Government and not for the Central Government or the Central Legislature.

As regards the suggestion made by my Honourable friend, Mr. Pantulu, that the Local Government should be asked to tighten up their Adulteration Acts, I think a good many Local Governments have passed these Adulteration Acts and action has been taken, possibly in some provinces not as effectively as in others, but even there it is entirely a matter of provincial administration. For these reasons I hope that, now that the constitutional position has changed so much to the advantage of my

Honourable friend, the Leader of the Opposition, in regard to this particular matter, I suggest that he should now devote his energies and enthusiasm to educating and persuading the Provincial Governments. So far as the Centre is concerned, he has devoted nearly 12 years to the advocacy of his case, but I am sure that a much shorter period of advocacy in the provinces will meet with the success which it deserves.

THE HONOURABLE MR. KUMARSHANKAR RAY CHAUDHURY: On a point of information, Sir. May I ask the Honourable the Leader of the House whether it is open to the provinces to raise subsidiary tariff walls against the Government of India tariff?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: I am not prepared to answer a question of tariff now.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I find that the Honourable the Leader of the House seems convinced as regards the necessity and the desirability of the object which has led me to move this Resolution for the fifth time. Sir, it pains me to find that although I have pursued this question for practically 12 years, nothing much has come out of it. Sir, the Honourable Mr. Ramadas Pantulu seemed to have misunderstood the position as far as prohibiting the manufacture of *vanaspati* was concerned. My Resolution never aimed at the stopping of the manufacture of *vanaspati*. Let this manufacture go on, but in order to save the masses from being cheated, I say that the product should have some sort of harmless permanent colouring so that it can easily be detected. The Honourable Mr. Ramadas Pantulu supports me that this *vanaspati* unfortunately has no colour, no smell and no taste, and so it is easily mixed with pure ghee. He has also observed that I should set up a prize for research work on this chemical permanent harmless colouring. Sir, I hold that for such a research, Government should find the money. As far as agriculture is concerned, Government have always declared that they have the best interests of the agriculturist at heart. This matter is one which vitally concerns the agriculturist, and it is a matter of necessity. His Excellency the Viceroy, the Marquess of Linlithgow, has deputed a specialist and an expert to go into the question of the dairy products in general and to find ways and means to improve their quality and quantity. Sir, my Honourable friend Mr. Ramadas Pantulu has also observed that it will restrict the sales of cotton seeds and other seeds the oil from which is readily mixed with the *vanaspati*. I might mention that agriculturists generally pass all their produce to the merchants, and so, as far as the seeds are concerned, he is not directly interested. The cotton seed is a very useful food for cattle. In the Punjab, all the milch cattle are daily given a quantity of cotton seed in their food. That improves the quality of the butter and the proportion of the butter in the milk. If the agriculturists keep seeds with him, that will be instrumental in improving the quality and the yield of milk.

Sir, the Honourable the Leader has asked me why I have moved part (*b*) of the Resolution. I very well knew that this question will naturally arise. But my fear was—and I understand it is also now the fear of the Government—whether the new Provincial Councils will actually work long and what their fate will be. From recent developments we find that perhaps these Councils will not last long and that in a great number of provinces "no confidence" Motions will be moved every time, and the Congress will try to wreck the Constitution.

THE HONOURABLE MR. V. RAMADAS PANTULU: If the Councils meet at all.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: My Honourable friend, the Leader of the Congress Party, says, "If the Councils meet at all". That, Sir, makes my position stronger in saying that as the Councils and Assemblies will not last long, it devolves on the Government of India to look after this matter. My Honourable friend the Leader of the House is also in charge of the Department of Health in the Government of India and as this question vitally concerns the health of the people, I hold that it is the duty of his Department to see that the object of my Resolution is fulfilled. The second reason which led me to move part (*b*) is that the lead should be given by the Government of India. In case the Provincial Legislatures work for a longer time, and in case Government do not accept part (*a*) of my Resolution, they will say that there is not much use their prohibiting the manufacture of *vanaspati* at Bombay or Calcutta or elsewhere. So, it is the duty of the Government to give them a lead by enforcing the prohibition on the import of *vanaspati* into India unless it is coloured in the manner desired, *i.e.*, that it cannot be readily mixed with pure ghee. Unless this is done, the Local Legislative Councils of the various provinces will not be able to achieve the object aimed at by this Resolution. Sir, it is imperative that the Government of India should move in such a manner as may result in the adulteration of ghee being stopped.

Another point, to which the Honourable the Leader of the House has referred to. There are other Local Governments under the Central Government. I mean the Government of Ajmer, the Government of Coorg, and so on. What about these areas? Government at the centre must have some legislation for these areas as well. That is another reason which has led me to move part (*b*).

As regards forwarding copies of the debate of this House to the Provincial Governments, it is not much use sending them now, because as I have observed the Punjab Government as well as the Punjab Legislature are for it, but they cannot succeed even if they pass such a Bill in their province unless there is some restriction imposed upon the import of colorless *vanaspati*. Sir, it has been asked whether the food value of pure ghee is likely to be affected by the addition of this *vanaspati*. On that I have cited authorities His Excellency the Commander-in-Chief who had his research institute at Kasauli behind him, and I have also given the authority of Dr. Thomas, the Chemical Examiner of the Punjab that this *vanaspati* has practically no food value at all. It simply adds weight. Anything else might equally well be mixed with ghee, mud even, for all the value it has. (*An Honourable Member*: "Is it harmful to health?") It is not harmful as it is not poisonous. It simply has no food value at all. It is a makeweight which is depriving people of real nourishment. I, therefore, request the Government to kindly accept anyhow the first part of the Resolution, because if they don't it will mean that after accepting the principle in the Resolution I moved here in 1928, now instead of Government stopping the cheating they are for it and do not care for the health of the people. So I request that if part (*b*) is not acceptable, part (*a*) may be accepted in full, so that when the proceedings are forwarded the provinces may be quite clear about the

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position. I consider that Government should accept part (*a*) and forward (*b*) to Provincial Governments for their favourable consideration.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: I think my Honourable friend was in a somewhat pessimistic mood. He started by saying that after 11 years of persistent effort he finds himself practically where he was at the beginning. And in that pessimistic mood he said what is the point of thinking about Provincial Governments and Legislatures; they may not meet at all. As far as the Punjab is concerned, I think my Honourable friend will agree that his pessimism is a little exaggerated.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: As far as the Punjab is concerned I said that unless (*a*) is accepted there is no use in accepting (*b*).

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: Will my Honourable friend allow me to proceed. I think I have followed his argument and I hope I shall be able to make my reply quite clear. I was going to say, as far as the Punjab Government is concerned I do not think he need be in any very great apprehension that the Provincial Legislature will cease to function. He has put the question, why should not part (*a*) of the Resolution be accepted, and in the course of his speech he has already pointed out that since he last spoke on this subject the bulk of this vegetable product is now manufactured in India and that very small quantities are now imported from abroad. Further, as I said when I spoke in replying to him, even in regard to those small quantities if a Provincial Government were convinced that it was necessary to regulate the entry of that aricle or to regulate its sale in order to prevent adulteration, they had got full power as far as I gather under the present Government of India Act. Then my Honourable friend went on to say that if I did not accept the Resolution I should be going back on what the Government of India did in 1929. I think my Honourable friend is under a misapprehension as to what the attitude of the Government of India was in 1929 and I think it is only fair that I should refresh his memory as to what the spokesman of the Government of India said in 1929. If he will kindly look at page 129 of the proceedings of which he has got a copy in his hand, he will find that this is what Sir Geoffrey Corbett said:

"We have only received the opinions of a few of the Local Governments so far and the major Local Governments and commercial bodies have not yet replied. In these circumstances I am sure the Honourable mover will understand that it will be improper for the Government of India to express an opinion or indeed to hold an opinion until they have received and considered what the Local Governments have to say".

Then he goes on to say:

"We will take no further part in the debate and we will not vote, but we shall be very glad to hear what the views of the Members of the House are in order that when we come to consider the opinions of the Local Governments we may have the considered opinions of members here too".

That is what the Government of India said in 1929.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: On a point of personal explanation, Sir, I know that Sir Geoffrey Corbett said that he had not got the opinions of Local Governments. But he had practical sympathy with the object which my Resolution had in view. And in the

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number of years which have since elapsed the Government of India must have received the opinions of Local Governments. The Honourable Leader did not say whether those opinions had been received or not, and as he has said nothing about it I presume they were all for it.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: I think the latter part of his presumption also, if I may inform my Honourable friend, is not correct. The opinions were received. Many Local Governments did not want any action at all. But I hope I have been able to convince my Honourable friend that the Government of India did not accept his Resolution in 1929. On the other hand, they very clearly said that they formed no opinions at all; and subsequently when this subject was again debated in 1931 on another Resolution by my Honourable friend, Sir Frank Noyce stated the position of the Government of India then.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: May I know what is their opinion now?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: If my Honourable friend will allow me to complete my argument. I have said that the Government of India never accepted this Resolution of my Honourable friend, in making the statement I did I was not going back on any decision of the Government of India. I have, I hope, been able to convince the House that the action which my Honourable friend desires can now be taken by Provincial Governments. I do not for a moment wish to say that the Government of India are in any way indifferent to the production of pure ghee. As my Honourable friend has already stated, we have taken steps to improve the breed of cattle, we have asked for a specialist to advise us in regard to milk products. The particular action which my Honourable friend suggests is a matter really for the Local Governments concerned. In the first place he ought to try and convince them. I do not quite know what view they are likely to take, and I have said that so far, I think I am correct in saying, they have not asked us to take the action which he now proposes. I hope my Honourable friend agree that this is a subject really now for the Provincial Governments and that action can be taken by them if they are convinced by his arguments or if they think that any other action is required in order to ensure a pure supply of ghee and it is for that reason that I have to oppose his Resolution. I myself was going to support the suggestion of my Honourable friend, Mr. Pantulu, that the Honourable Leader of the Opposition should offer a prize, but as that suggestion was not considered favourably I would not like to press it.

I hope the reply that I have given will not be regarded by my Honourable friend as in any way unsympathetic. I am in full sympathy with the object of my Honourable friend that there should be an ample and pure supply of ghee for the people, that it is good for the cultivator and it is good for the populace, but the exact measures which he suggests for preventing the adulteration of ghee by this particular product can I think only be taken adequately by Provincial Governments.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): Has the Honourable Leader anything to say in regard to the suggestion made

by the Honourable Mover that the Resolution be put to the House in two parts?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: No, Sir, I have no objection to its being put in two parts.

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA) (to the Honourable Rai Bahadur Lala Ram Saran Das): Do you wish to press your Resolution?

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

THE HONOURABLE THE CHAIRMAN (SIR PHIROZE SETHNA): In regard to the suggestion made by the Honourable Mover that the Resolution be put in two parts, I am not in favour of the same for the good reason that the remedy he proposes both in the case of imported solidified vegetable oil is exactly the same. Therefore I put the Resolution as a whole.

The question is:

"That this Council recommends to the Governor General in Council that:

(*a*) the import into India of solidified vegetable oil, *vanaspati* and other similar products be entirely prohibited unless they are given such permanent harmless colouring as may readily distinguish them from and render them unfit for readily mixing without detection with natural pure ghee;

(*b*) the manufacture in India of solidified vegetable oil, *vanaspati* and other similar cheap products be entirely prohibited unless they are also permanently coloured in the same way as suggested in clause (*a*) for imported articles, in order to render them unfit for readily mixing without detection with natural pure ghee."

The Motion was negatived.

The Council then adjourned till Eleven of the Clock on Wednesday, the 7th April, 1937.