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THE

LEGISLATIVE ASSEMBLY DEBATES

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(30th August to 22nd September, 1939)

TENTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1939



NEW DELHI
GOVERNMENT OF INDIA PRESS
1940.

Legislative Assembly.

President:

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I.

Deputy President:

MR. AKHIL CHANDRA DATTA, M.L.A.

Panel of Chairmen:

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MR. A. AIKMAN, C.I.E., M.L.A.

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MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistants of the Secretary:

MR. M. N. KAUL, BAR.-AT-LAW.

KHAN SAHIB S. G. HASNAIN.

Marshal:

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions:

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MR. A. AIKMAN, C.I.E., M.L.A.

SYED GHULAM BHIK NAIRANG, M.L.A.

MR. N. M. JOSHI, M.L.A.

RAJA SIR VASUDEVA RAJAH, C.I.E., M.L.A.

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| In the Legislative Assembly Debates, Simla Session, 1939,— | | | |
| (1) Vol. V, No. 3, dated the 1st September, 1939, page 221, line 2 from the bottom, <i>for</i> “part (b)” <i>read</i> “parts (b) and (c)”; | | (3) Vol. V, No. 6, dated the 8th September, 1939, page 390, line 4, <i>after</i> “14th March, 1939,” <i>insert</i> “in this House”; | |
| (2) Vol. V, No. 5, dated the 5th September, 1939,— | | (4) Vol. V, No. 13, dated the 20th September, 1939, page 744, in the subject-heading to short Notice Question, <i>for</i> “Com- vention” <i>read</i> “Conversion”; | |
| (i) page 366, line 19 from the bottom, <i>for</i> “wheeler” <i>read</i> “whether”; | | (5) Vol. V, No. 14, dated the 21st September, 1939, page 832, line 12 from the bottom, <i>for</i> “presonnel” <i>read</i> “per- sonnel”. | |
| (ii) page 377, line 17, <i>for</i> “officers” <i>read</i> “officer”; | | | |
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LEGISLATIVE ASSEMBLY.

Friday, 1st September, 1939.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

STARRED QUESTIONS AND ANSWERS.

APPOINTMENT OF A MUSLIM AS ESTABLISHMENT SUPERINTENDENT IN THE OFFICE OF THE CHIEF ENGINEER, NORTHERN COMMAND.

†48. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : (a) Will the Defence Secretary please state if it is a fact that the post of Establishment Superintendent in the office of the Chief Engineer, Northern Command, has been held by non-Muslims ever since the formation of that office, except for a few months in a make-shift arrangement ?

(b) What steps, if any, do Government propose to take to redress the grievance of Muslims in that regard ?

Mr. C. M. G. Ogilvie : (a) Yes.

(b) It is not possible to allow communal considerations to prevail in the staffing of particular appointments. The principle of communal representation is applied to the Military Engineer Services as a whole, irrespective of ranks and grades.

PAUCITY OF MUSLIMS IN THE MILITARY ENGINEER SERVICES IN INDIA.

†49. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : (a) Will the Defence Secretary please lay a statement on the table, showing the comparative strength of Muslims and other communities in various grades and ranks of Military Engineering Services in India ?

(b) Will Government please state if it is a fact that the Muslim population in the Northern Command area is 76·9, and Muslim representation in the Military Engineering Services Department here is only 28·8 ?

(c) Have Government considered the desirability of reserving posts for Muslims by increased representation in the Northern Command, in the various ranks and grades of the Military Engineering Services on population basis, as in the Indian State Railway Services ?

(d) Will the Defence Secretary please state if it is a fact that the fixed percentage of 25 on all India basis has not materialised in various grades and ranks of Military Engineering Services ?

(e) Do Government contemplate taking any steps to make up the scheduled percentage of Muslims, and if so, how ?

†Answer to this question laid on the table, the questioner being absent.

Mr. G. M. G. Ogilvie : (a) I lay a statement on the table.

(b) and (c). I refer the Honourable Member to the reply I gave to parts (b) and (c) of Matulana Zafar Ali Khan's starred question No. 940 on the 30th September, 1937. Government have no information as to what proportion of the total population in the Northern Command area is Muslim. According to the latest returns, the percentage of Muslims in the Military Engineer Services in that Command is 31 per cent.

(d) The communal ratio is fixed for the Military Engineer Services as a whole, irrespective of ranks and grades.

(e) The local authorities in the Military Engineer Services, who control recruitment of subordinate personnel, have been instructed to keep in view communal proportions as far as it is possible to do so with due regard to administrative efficiency.

Statement showing by communities various categories employed by the Military Engineer Services on the 1st January, 1939.

| | Hindus. | Muslims. | Other communities. | Total. |
|--|---------|----------|--------------------|--------|
| 1. Assistant Engineers (Permanent) | 8 | 3 | 1 | 12 |
| 2. Sub-divisional officers B/R. (Permanent and temporary). | 64 | 20 | 13 | 97 |
| 3. Sub-divisional officers E/M | 5 | | 10 | 15 |
| 4. Overseers B/R (Permanent and temporary) | 279 | 77 | 77 | 433 |
| 5. Supervisors F/S (Permanent and temporary) | 29 | 3 | 6 | 38 |
| 6. Storekeepers (Permanent and temporary) | 51 | 9 | 19 | 73 |
| 7. Clerks (Permanent and temporary) | 841 | 104 | 149 | 1,184 |
| 8. Draftsmen (Permanent and temporary) | 125 | 80 | 53 | 268 |
| 9. Surveyor Assistants (Permanent and temporary). | 59 | 5 | 9 | 73 |
| 10. Superintendents E/M (Permanent and temporary). | 70 | 15 | 30 | 115 |
| Total .. | 1,531 | 416 | 361 | 2,308 |

PAUCITY OF MUSLIMS IN THE MILITARY ENGINEER SERVICES IN INDIA.

†50. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : (a) Will the Defence Secretary please state if it is a fact that superior appointments in the Military Engineering Services Department are not made on the basis of communal proportion? If so, why?

†Answer to this question laid on the table, the questioner being absent.

(b) Will he be pleased to state if it is a fact that out of 24 posts of charge of clerks in Garrison Engineers' offices (in the Northern Command) only 3 are held by Muslims ? If not, what is the actual strength of Muslims ?

(c) Are Government thinking of taking any action to bring the strength of Muslims in the said grade in Northern Command by increased proportion in consideration of their population ?

Mr. C. M. G. Ogilvie : (a) Yes, since these appointments require special qualifications and experience.

(b) There are 23 appointments of charge clerks, out of which five are held by Muslims.

(c) No, for the reasons given in my reply to parts (b) and (e) of the previous question.

PAUCITY OF MUSLIMS IN THE SURVEYOR OF WORKS CADRE IN THE MILITARY ENGINEER SERVICES.

+51. ***Khan Bahadur Shaikh Fazl-i-Haq Piracha :** (a) Will the Defence Secretary please state if it is a fact that there is a great paucity of Muslims in the Surveyor of Works cadre in the Military Engineering Services ?

(b) Do Government propose to give appropriate representation to Muslims in the said cadre ?

(c) Is it a fact that facilities for Muslims for qualifying for an appointment to the above cadre have been provided, and if the answer be in the affirmative, what steps have been taken ?

(d) Will Government please state if it is a fact that recently when Sub-Divisional Officers on the Electric and Mechanical side were taken, no post was given to Muslims ?

(e) Are Government taking any steps to raise the strength of Muslims in the above-mentioned rank ?

Mr. C. M. G. Ogilvie : (a) Yes.

(b) Yes, provided Muslims with the necessary qualifications are available.

(c) Yes. Candidates of all classes are interviewed and those with the necessary aptitude are selected for training. If recommended on completion of this training, they are afforded opportunity of admission to the cadre by passing a qualifying examination.

(d) No. Out of the seven appointments, two were given to Muslims.

(e) I refer the Honourable Member to my reply to part (b) of the question.

*Answer to this question laid on the table, the questioner being absent.

DEPUTATION TO THE ENGINEER-IN-CHIEF TO REPRESENT THE GRIEVANCES OF MUSLIMS.

***52. *Khan Bahadur Shaikh Faiz-i-Haq Piracha :** (a) Will the Defence Secretary kindly state if it is a fact that the Muslims' Rights Protection Board, Lahore, led a deputation to Major-General Gaskell, the Engineer-in-Chief, in Delhi, last February, to represent the grievances of Muslims ?

(b) Have Government taken any action to redress the grievances, if so, what ?

Mr. C. M. G. Ogilvie : (a) Yes.

(b) I refer the Honourable Member to the reply I have given today to part (e) of his starred question No. 49.

MILITARY FORCES REQUISITIONED BY THE COLLECTOR OF BADAUN.

***53. *Mr. Muhammad Azhar Ali** (on behalf of Dr. Sir Ziauddin Ahmad) : (a) Will the Defence Secretary please state if it is a fact that the Collector of Badaun, United Provinces, requisitioned military force in 1939 ?

(b) How many British soldiers and belonging to what regiments were sent to Badaun ?

(c) Will the Defence Secretary lay on the table a copy of the letter from the civil authorities demanding help ?

(d) Did the Military Officer in charge of detachments sent to Badaun submit any report ?

(e) Will Government be pleased to lay a copy of the report on the table ?

Mr. C. M. G. Ogilvie : (a) Yes.

(b) Four British officers and 125 other ranks, belonging to the 2nd Battalion, Oxford and Bucks Light Infantry.

(c) and (e). No.

(d) Yes.

Mr. N. M. Joshi : May I ask for what purpose their services were requisitioned ?

Mr. C. M. G. Ogilvie : On account of a communal disturbance in the city of Badaun and the village of Naglia.

Mr. Lalchand Navalrai : Did the Provincial Government ask for it ?

Mr. C. M. G. Ogilvie : Yes, the Provincial Government asked for it.

Mr. N. M. Joshi : May I ask whether they took part in quelling the riots and whether there was any firing ?

Mr. C. M. G. Ogilvie : There was no firing.

REPORT OF THE COMMITTEE ON THE SIMLA EXODUS.

54. *Mr. Lalchand Navalrai : (a) Will the Honourable the Home Member be pleased to state what was the report of the committee appointed on the Simla exodus ?

(b) What economy in all has the committee suggested and what numbers of officials drawing their respective salaries have been stopped from going to Simla during the Simla season ?

(c) Have Government accepted the report ?

(d) Will Government place the report on the table of the House ?

(e) Are there no further possibilities of economy in this connection ; if not, why not ?

The Honourable Mr. J. A. Thorne : (a), (b) and (c). I would refer the Honourable Member to the Press communiqué, dated the 25th May, 1939 (copies of which are in the Library of the House). As a result of this decision 48 officers and 1,285 members of the ministerial staff who previously moved with Government will not move to Simla in 1940.

(d) No.

(e) The decision goes as far as present circumstances require, but the position is likely to be reviewed as occasion arises.

Mr. Lalchand Navalrai : May I know if the reasons given for accepting the report were also mentioned in the communiqué ?

The Honourable Mr. J. A. Thorne : Yes, Sir. The communiqué states the case at some length, and it has already been published in the newspapers.

Mr. Lalchand Navalrai : Are the reasons given by the Committee itself also given in the communiqué ?

The Honourable Mr. J. A. Thorne : I must refer the Honourable Member to the communiqué. I should have thought that the Honourable Member would have taken sufficient interest in the subject to read what appeared in the press.

Mr. Lalchand Navalrai : But why does the Honourable Member not lay it on the table as I have asked in my question ?

The Honourable Mr. J. A. Thorne : It is in the Library of the House.

Mr. N. M. Joshi : May I ask what is exactly the meaning of the phrase "as occasion arises" ?

The Honourable Mr. J. A. Thorne : I am afraid I cannot define that more explicitly at the moment.

Mr. N. M. Joshi : May I ask whether it means that Government feel the need for retrenchment or anything else ?

The Honourable Mr. J. A. Thorne : I have no doubt that that might be one element in the occasion.

Mr. N. M. Joshi : May I ask whether the Government of India have got a surplus of money at this time and, therefore, they have not considered the scheme as a whole ?

The Honourable Mr. J. A. Thorne : I must refer my Honourable friend to the Finance Member.

Mr. N. M. Joshi : May I ask whether the Honourable Member could not tell me because if the Government of India and his Department have considered the question, I am sure they must have consulted the Finance Member ?

The Honourable Mr. J. A. Thorne : It is a question that cannot be answered without notice either by me or by anyone else.

Babu Baijnath Bajoria : Has there been any reduction in the number of officers who came up to Simla this year ?

The Honourable Mr. J. A. Thorne : Yes, Sir, but I cannot give any detailed answer to that without notice.

TRANSFER OF BRITISH INDIAN TROOPS TO THE IMPERIAL ESTABLISHMENT.

55. *Mr. Lalchand Navalrai : (a) Will the Defence Secretary be pleased to state if it is a fact that there has been a transfer of British Indian troops from India to the Imperial establishment ? If so, for what purposes has the transfer taken place and to what extent ?

(b) Is the transfer made for the defence of India or are they kept as United Kingdom's reserve in the east at the expense of India to meet Imperial exigencies ?

(c) Is it a fact that Indian troops as distinguished from British troops have recently been transferred to Aden ? If so, is it for the defence of Aden, Egypt and Sudan or for several British and French territories in East and North Africa ? If so, under what authority has this been done ? If not, for what purposes have the troops been transferred ?

Mr. C. M. G. Ogilvie : (a) The answer to the first part of the question is in the affirmative. As regards the second, it has been found possible to reduce the number of British troops on the Indian establishment owing to the greater mobility and power conferred by modernisation. The following units have already been transferred to the Home establishment :

- 2 British Cavalry regiments.
- 4 R. H. A. batteries.
- 1 Field regiment, R. A.
- 1 Medium regiment, R. A.
- 6 British Infantry battalions.
- 6 Light tank companies.

(b) The answer to the first part does not arise. That to the second is in the negative.

(c) Yes, for the strengthening of the Aden defences. The loan of these troops was authorised by the Government of India.

Manlana Zafar Ali Khan : Apart from the consideration whether these troops were sent out of India for the defence of Imperialism or for the defence of India, may I know whether the House was consulted in the first instance and whether the Leader of the Muslim League Party or the Leader of the Congress Party were also consulted ?

Mr. C. M. G. Ogilvie : These troops are British troops and have been transferred from the Home establishment to the British establishment. No question of consultation arose.

Mr. N. M. Joshi : May I ask whether the salaries and some of the allowances of these troops are to be continued to be borne by the Indian treasury or by the British treasury ?

Mr. C. M. G. Ogilvie : These troops have now passed to the Imperial establishment and all expenses connected with them will be borne by the United Kingdom.

Mr. Lalchand Navalrai : With reference to clause (c) of the question, may I know whether Indian troops have also been sent for purposes of defence to Aden, Egypt and Sudan ?

Mr. C. M. G. Ogilvie : Indian troops have been transferred to Aden, but it is not for the purpose of the defence of Egypt or the Sudan, but for the purpose of the defence of Aden.

Mr. Lalchand Navalrai : Who will bear their expenses ?

Mr. C. M. G. Ogilvie : The expense of this battalion is being borne by His Majesty's Government.

Mr. N. M. Joshi : May I ask whether any Indian troops were sent to Malaya ?

Mr. C. M. G. Ogilvie : That, Sir, I submit, does not arise from this question ?

Mr. N. M. Joshi : May I ask whether the Government of India propose to give an opportunity to this Legislature to discuss this question, especially the question of India bearing the expenses ?

Mr. C. M. G. Ogilvie : I submit that does not in any way arise from this question.

Sardar Sant Singh : May I know if the Indian troops that have been sent to Aden, Egypt and Sudan will receive any overseas allowances or any allowances other than those which are normally paid to them in India ?

Mr. C. M. G. Ogilvie : I shall require notice of this question.

Mr. N. M. Joshi : May I ask whether this question arises out of this question or not as a matter of proper polities whether the Government of India will give an opportunity to this House ?

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member can put a short notice question on the subject.

REVISION OF THE SCALE OF PAY OF MECHANICIANS CALLED FOR INTERVIEW AT BOMBAY.

56. ***Mr. Lalchand Navalrai :** Will the Defence Secretary be pleased to state :

- (a) whether the Commanding Officer, Naval Depot, H. M. I. Dockyard, Bombay, advertised for the posts of Mechanics (Engine Room Branch) and Electrical Artificers in December, 1938, and called some of the applicants to Bombay for interview ;

- (b) whether it is a fact that the candidates assembled for interview at Bombay were informed just before the meeting of the Selection Committee that the Government of India had issued instructions revising the scale of pay and reducing the starting salary of Mechanicians from Rs. 70 per mensem, as advertised, to Rs. 50 per mensem ;
- (c) whether the candidates so assembled were also informed that only those of them who were prepared to accept the revised starting salary and scale of pay could appear for interview ;
- (d) whether it is a fact that such a material modification in the terms of the advertisement was not communicated to the applicants called for interview, either individually or through the medium of the Press ; if not, why not ;
- (e) whether the Government of India are aware that a large number of the candidates called for interview did not accept the revised terms and preferred to stay away and did not appear for interview ;
- (f) whether Government appreciate the fact that a number of candidates who were not prepared to accept the revised terms, had come from distant places at considerable personal inconvenience and expense ;
- (g) whether Government do not propose to grant such candidates their travelling expenses, etc., from and to their places of residence ; if not, the reasons for not doing so ;
- (h) whether it is a fact that such procedure has never been followed in the past in filling up public appointments ;
- (i) if the answer to the last question be in the affirmative, whether Government are prepared to give their reasons for such a departure in this case ;
- (j) if the answer to (h) be in the negative, whether Government are prepared to give specific instances of such procedure having been followed ; and
- (k) what steps Government propose to take against such injustice being done in the future ?

Mr. C. M. G. Ogilvie : (a) Yes.

(b) Yes.

(c) Yes.

(d) Yes, as regards the first interview on the 30th December, 1938. Further candidates called at Bombay for interview on the 23rd January, 1939, were informed individually of the revised conditions.

(e) Yes.

(f) Yes, as far as the interview on the 30th December, 1938, was concerned.

.. (g) Government propose to allow these candidates their travelling expenses.

(h)—(k). The situation arose from a misunderstanding ; and no repetition need be anticipated.

Mr. Lalchand Navalrai : Has it been settled what expenses are going to be given to them ? Will they be given their fares only or also the expenses at Bombay ?

Mr. C. M. G. Ogilvie : They will submit no doubt their travelling expenses and if they are considered reasonable they will be met.

JOINT INSPECTING ASSISTANT COMMISSIONER OF INCOME-TAX FOR SIND AND NORTHERN DIVISION OF BOMBAY PRESIDENCY.

57. ~Mr. Lalchand Navalrai : (a) Will the Honourable the Finance Member be pleased to state if it is a fact that under the new arrangement, a Joint Inspecting Assistant Commissioner of Income Tax for Sind and Northern Division of Bombay Presidency is located at Ahmedabad ?

(b) What is the distance between one end of his jurisdiction to the other extremity of his jurisdiction extending upto Baluchistan ?

(c) How long has he to be on tour within his beat ?

(d) Has the Inspecting Assistant Commissioner visited Sind or Baluchistan ever since he took charge ? If so, when and for how long ?

(e) Is it a fact that the long distances cause delay and loss of efficiency of work so far as Sind and Baluchistan are concerned ?

(f) What steps do Government propose to take to remove the inconvenience caused by joint working with a view to promoting despatch of work and gaining knowledge of the local conditions ?

(g) What are the reasons for having a Joint Inspecting Assistant Commissioner for the aforesaid divisions ?

(h) Is it a fact that Sind Income-tax administrative work is being done at Ahmedabad, through non-Sindhi establishment and that the old Sindhi establishment is unwilling to go to work at Ahmedabad, owing to their service conditions not providing for working outside Sind ?

The Honourable Sir Jeremy Raismann : (a) Yes.

(b) About 1,400 miles.

(c) It is expected that he will normally be on tour for about nine months each year.

(d) In April, 1939, soon after taking over charge, the Inspecting Assistant Commissioner visited Sind. He has again been in Sind since the 8th June, 1939, and will remain there up to the middle of October. Baluchistan was visited by him for a week in July, 1939.

(e) No.

(f) Government do not consider that any inconvenience is caused by the joint charge and hence they do not propose to take any action in the matter.

(g) Government at present consider that one Assistant Commissioner can adequately deal with the work of this charge.

(h) The formal work of consolidating statements, etc., is done at Ahmedabad but other work is done in the Assistant Commissioner's camp office. During his stay in Sind most of the work is done through the Sindhi staff.

The Inspecting Assistant Commissioner has already received requests from several members of the Sindhi staff for appointment at Ahmedabad, so that there appears to be no general unwillingness on the part of the Sindhi establishment to work at Ahmedabad. The personnel of the Assistant Commissioner's permanent staff is at present under consideration.

Mr. Lalchand Navalrai : May I know whether the Sindhis who are offering themselves to go to Ahmedabad will be given their allowances and other expenses there ?

The Honourable Sir Jeremy Raisman : I require notice.

Mr. Lalchand Navalrai : May I know the reason why these two Divisions were joined ?

The Honourable Sir Jeremy Raisman : The reason was that we thought that the charge could be held by one man and, therefore, in the interest of economy, we did not employ more.

Mr. Lalchand Navalrai : Did not Government know that the distance will even add to the charges of the Inspector who tours in Sind.

Mr. President (The Honourable Sir Abdur Rahim) : That is a matter of argument.

PROTEST AGAINST THE LEVY OF A STAMP DUTY ON AUTHORISATIONS BY INCOME-TAX ASSEESSEES.

58. *Mr. Lalchand Navalrai : (a) Will the Honourable the Finance Member please state if the attention of Government has been drawn to a letter of protest in connection with the Income-tax Act published by the *Sind Observer*, dated 13th June 1939 ?

(b) Is it a fact that the Central Board of Revenue have asked the assessees to authorise their representatives to appear with a general stamp paper of rupees two as an authority to act on their behalf in the income-tax affairs, before the income-tax officers ? If so, under what law or rule such an order has been made ?

(c) Has the attention of Government been drawn to section 61 (1) of the amended Income-tax Act which does not require the writing to be on a stamp paper and also to the fact that the ordinary *Vakalat nama* of lawyers appearing in Civil and Criminal courts requires only an eight annas' stamp ?

(d) Are Government aware that by this time there is a great discontent and dissatisfaction, especially among merchants, against such an order ?

(e) Do Government propose to remove such an order, if any has been passed ? If not, why not ?

The Honourable Sir Jeremy Raisman : (a) Yes.

(b) and (c). Government have been advised that the authorisation envisaged in section 61 of the Indian Income-tax Act, 1922, as recently amended, when in favour of a person other than a lawyer is a power-of-attorney within the meaning of section 2 (21) of the Indian Stamp Act, 1899, and is, therefore, chargeable with stamp duty in accordance with

Article 48 of Schedule I to that Act. If it is in favour of a lawyer it would be a *Vakalatnama* and chargeable as such with court fees under Article 10 of Schedule II of the Court Fees Act, 1870. The rates of stamp duty and court fees are governed by the various Stamp and Court Fees Amendment Acts enacted in the Provinces.

(d) and (e). Government have received a few representations on the subject but most of them proceed on the erroneous assumption that the payment of stamp duty on powers-of-attorney executed for the purposes of section 61 of the Income-tax Act is being demanded by the Income-tax authorities in pursuance of the Income-tax Act. That is not the case as the Income-tax authorities are only insisting on compliance with the requirements of the Stamp Act. The stamp duty on power-of-attorney is a provincial subject and the revenue therefrom belongs to the provinces. The Central Government have no power to allow any relaxation of a legal requirement.

Mr. Lalchand Navalrai : Is the Honourable Member aware that there is no definition of the term "power-of-attorney" in the Income-tax Act? Is the Honourable Member also aware that the Income-tax Act does not provide that a "power-of-attorney" will be stamped according to a particular other Act?

The Honourable Sir Jeremy Raisman : I have already said that it is not the Income-tax Act which provides this but other Provincial enactments.

Mr. Lalchand Navalrai : It is because that the Income-tax Act does not say that the stamp duty will be according to the Stamp Act that I am asking why it should not be charged according to the Income-tax Act?

The Honourable Sir Jeremy Raisman : The Honourable Member being a lawyer is surely aware of the fact that the fact that this charge is not provided in the Income-tax Act is no reason why it should not be charged for under other competent enactments which require it to be charged.

Mr. Lalchand Navalrai : But there is no obligation under the Income-tax Act.

(No answer.)

Babu Baijnath Bajoria : Was this a new rule laying down that a stamp duty of Rs. 2 should be affixed on a power-of-attorney or was it in vogue previously also?

The Honourable Sir Jeremy Raisman : This is not a new rule. It is merely an effect which has just been realised of an existing law.

Babu Baijnath Bajoria : So may I take it that it was not necessary before to affix a stamp duty of Rs. 2?

The Honourable Sir Jeremy Raisman : It was necessary before.

Mr. Lalchand Navalrai : May I know whether the so-called experts who are allowed to appear in the Income-tax offices will also be called upon to give a stamp duty of eight annas just like pleaders?

The Honourable Sir Jeremy Raisman : Their power-of-attorney requires the higher stamp duty which is to be on a power-of-attorney, not the stamp which is to be affixed to a *vakalatnama*.

†50*—71*.

INDIANS SELECTED FOR THE INDIAN MEDICAL SERVICE.

73. *Mr. Muhammad Azhar Ali (on behalf of Dr. Sir Ziauddin Ahmad) : (a) Will the Defence Secretary please state how many Indians in Indian Medical Service were selected by the last Selection Committee held this year ? How many of them were Muslims, Christians, Sikhs and Hindus ?

(b) Is it not a fact that Government ignored the Resolution of 1934 of the Government of India and followed the old practice of dividing minority share equally between Muslims, Sikhs and Christians ?

(c) How do Government propose to redress the injustice done to the Muslims ?

Mr. C. M. G. Ogilvie : (a) 13, namely, three Muslims, one Christian and nine Hindus.

(b) and (c). Appointment to the Indian Medical Service is not made on a communal basis, but after consideration of a candidate's qualifications and fitness for the Service. The candidates best qualified are appointed irrespective of the community to which they belong.

Mr. Muhammad Azhar Ali: May I know why this communal rule should not be applied to this service ?

Mr. C. M. G. Ogilvie : If the Honourable Member will look into the Home Department notification on the subject, he will see that the communal rule is limited to the Indian Civil Service and Central Services, Classes I and II, and it has no bearing on any military services. The I. M. S. is a military service.

RESOLUTIONS PASSED BY THE HOME MINISTERS OF PROVINCIAL GOVERNMENTS.

73. *Mr. Muhammad Azhar Ali (on behalf of Dr. Sir Ziauddin Ahmad) : (a) Will the Honourable the Home Member be pleased to lay before the House the resolutions passed by the Home Ministers of the Provincial Governments at a meeting convened by him ?

(b) Was there any resolution about suppressing communal propaganda ?

(c) Did the Government of India satisfy themselves that the Provincial Governments will not misuse their powers and persecute their political opponents on the ground of suppressing communal tension ?

The Honourable Mr. J. A. Thorne : (a) and (b). The Honourable Member is referred to the Press communiqué, dated the 29th May, 1939, on the subject, a copy of which is available in the Library of the House.

(c) The Honourable Member's question shows a misconception of the part which the Government of India played in the conference. Though the conference was convened by the Government of India after consulting the Provincial Governments, the Home Member's part in it was on the same footing as that of the Provincial Home Ministers ; and it is not the function of the Government of India either to interpret or to criticise the resolutions that were passed.

*These questions were withdrawn by the questioners.

GRIEVANCES OF A HINDU CANDIDATE SEEKING ADMISSION FOR TRAINING AS AN ARTIFICER ON H. M. I. S. " DALHOUSIE".

f74. *Mr. M. S. Aney : (a) Will the Defence Secretary be pleased to state whether his attention has been drawn to the note by a correspondent published in Marathi in the *Kesari* of Poona of the 16th June, 1939 under the heading "A clever way to refuse admission to Hindus"?

(b) Is it a fact that a Hindu candidate who applied for admission for training as an Artificer on H. M. I. S. " Dalhousie ", was asked at the interview whether he would take beef and on his refusal to do so, his application was rejected and he was supplied with a ticket for return journey to his place of residence ?

(c) Is it a fact that some other Hindu candidates also were similarly interrogated and their applications similarly rejected on getting a negative reply ? If so, what was the number and names of such candidates ?

(d) Will Government state whether beef eating is prescribed in the rules as a condition precedent to the admission of candidates for training on these ships ?

(e) Are Government aware that Hindus have the strongest religious objection for taking beef and that such a condition if it exists is repugnant to the religious feelings of the entire Hindu community ?

(f) Will Government be pleased to say whether they propose to issue instructions with a view to stop the practice of putting any questions regarding beef eating to Hindu candidates offering for training at the time of interview and to abrogate the rules, if any, requiring candidates to be willing to take beef ?

Mr. O. M. G. Ogilvie : (a) Yes.

(b), (c) and (d). No.

(e) The Government are fully aware of the religious objection of Hindus to eating beef. No such rule exists in the Royal Indian Navy.

(f) Does not arise.

REVISION OF PENSION RULES OF INFERIOR SERVANTS.

75. *Mr. N. M. Joshi : Will the Honourable the Finance Member be pleased to state :

(a) whether Government propose to take up early the question of revising the Pension Rules for members of the inferior service ;

(b) whether the attention of Government has been drawn to the statement made by his predecessor on the 22nd March, 1939, in reply to my supplementary question on question No. 1228, asked by Mr. B. Das that the time for the consideration of the question of reducing qualifying period for pension from 40 to 30 years, will be sometime after his departure ; and

(c) whether Government propose to take up the question for consideration now.

[†]Answer to this question laid on the table, the questioner being absent.

The Honourable Sir Jeremy Raisman : (a), (b) and (c). Government will consider the possibility of reducing the period of qualifying service for retiring pension in the case of inferior servants.

Mr. N. M. Joshi : Am I to understand that the Government will consider this question very early ?

The Honourable Sir Jeremy Raisman : Yes, Sir. It is being taken up now.

OBSERVANCE OF CERTAIN SIKH HOLIDAYS IN THE GOVERNMENT OF INDIA.

76. *Sardar Sant Singh : Is the Honourable the Home Member prepared to add to the holidays of the Government of India, the holidays on account of Guru Govind Singh's Birthday and Guru Tegh Bahadur's martyrdom day ? If not, what are the difficulties or reasons ?

The Honourable Mr. J. A. Thorne : I will repeat the answer that has already been given to this identical question. Sectional holidays are given on account of Guru Govind Singh's birthday and Guru Tegh Bahadur's martyrdom day. If the Honourable Member's intention is that these days shall be declared to be general holidays the reply is that the Government see no necessity for it.

PRACTICES AMOUNTING TO SERFDOM OR SERVITUDE IN AGRICULTURE.

77. *Mr. N. M. Joshi : Will the Honourable the Home Member be pleased to state :

- (a) whether Government are aware that in various parts of the country there are practices amounting to serfdom or servitude in agriculture ;
- (b) whether the Government of India have made enquiries on the subject ; if so, whether any of them have published any reports on the subject and whether Government will give the list of such reports if they exist ; and
- (c) whether Government propose to order any fresh enquiries on the subject in order to find out whether the practices have undergone any modifications or have disappeared ?

The Honourable Mr. J. A. Thorne : (a) Government are aware that various systems of debt bondage which may be described as somewhat akin to slavery are in vogue in certain rural areas of some provinces.

(b) The Government of India have made enquiries at the instance of the Slavery Committee of the League of Nations, and the information obtained was supplied to that Committee. I am not aware whether it has been published by the League of Nations.

(c) Yes : if the League of Nations requires further information.

Mr. N. M. Joshi : May I ask whether the Government of India themselves will publish this information ?

The Honourable Mr. J. A. Thorne : That suggestion will be considered. I think it will have to be a matter of reference to Provincial Governments before any decision is taken on it.

Mr. N. M. Joshi : In view of the fact that the matter is of great importance from the point of view of the freedom of the masses of people in this country, will the Government of India take early steps to consult the Provincial Governments and publish this information ?

The Honourable Mr. J. A. Thorne : I can promise that it will be considered at the earliest possible moment.

RESOLUTION RE NON-INDIAN COMPANIES AND PROTECTIVE TARIFFS—*contd.*

Mr. H. A. Sethar H. Essak Sait (West Coast and Nilgiris : Muham-madan) : Sir, on the 12th April last, my Honourable friend, Mr. Gadgil, moved the Resolution* which is here on the Order Paper, and I then moved my amendment†. Briefly stated, what Mr. Gadgil desired was that the benefits accruing out of protective tariffs should be enjoyed only by such companies and concerns of which the capital, membership, control and management was predominantly Indian. What I wanted to add to that was that over and above these conditions it must be insisted that such companies should also employ all Indian communities in due proportion in their services and labour. Within the few minutes that I had on that day I tried to answer some of the arguments that I expected to be raised from the Congress Benches against my amendment. I said that an objection might be raised that these concerns are private companies, started and managed by private individuals out of private capital, and that, therefore, the conditions that I wanted to impose could not very well be insisted upon. I think I was on that day able to dispose of this objection. I then said that these concerns which were making great profits out of the tariffs imposed by this Government were really being maintained by the consumer through the sacrifices that he was making by paying higher prices and otherwise ; and that, therefore, we, in this House as representing the consumer, could, on behalf of that consumer, impose restrictions and conditions which we think essential in the consumer's interest. I said that so far as the consumer is concerned all communities inhabiting this country were equally sacrificing and, therefore, it stood to reason that the benefits accruing out of these tariffs should go to all communities in due proportion. Then, Sir, a friend of mine here raised the objection that these were really concerns which were maintained by private capital and, therefore, those private companies should be allowed to deal with those concerns as they liked. I refuted that by saying that private capital alone was not in a position to maintain these concerns in their present condition and that is why these tariffs were imposed and in this way we certainly had the power to interfere. I will take up the argument from there and give an example of how we have interfered, and interfered successfully, in the management of private concerns.

“ That this Assembly recommends to the Governor General in Council that measures, legislative and otherwise, be taken immediately to prevent companies and concerns, the capital, membership, control or management of which is not predominantly Indian from taking advantage of protective tariffs imposed to foster the industrial development of this country.”

“ That the following words be inserted between the words ‘ Indian ’ and ‘ from ’ in the Resolution :

‘ or which do not employ all Indian communities in due proportion in their services and labour .’ ”

[Mr. H. A. Sattar H. Essak Sait.]

I quote here the case of the company-owned railways. It has been made clear in this House that latterly the Government have succeeded in imposing certain such restrictions, as I want to do by my amendment, in the management of the company-owned railways. For example, the South Indian Railway and the Madras and Southern Mahratta Railway and other company-owned railways have agreed to employ a good proportion of Muslims, Indian Christians, etc., among their employees. This condition was imposed upon them by the Government of India and it is working successfully. Therefore, the objection that my amendment is impracticable does not find any justification, so far as I am concerned. Then, I will call the attention of this House to the fact that the textile industry and the great steel industry of this country and many other industries which are protected by these tariffs are benefiting to the tune of crores of rupees through the protective duties imposed for the industrial development of this country. No one in this House or outside can dispute the fact that an infinitesimally small portion of these profits is shared by the community to which I have the honour to belong ; and the same is the case with the other minority communities such as the Indian Christians, depressed classes, etc. From the very nature of things it has been impossible for me, and I think it will be impossible for many of the Honourable Members of this House, to gather figures as to how many of one community are benefiting and how many are not. But I am sure no one in this House will accuse me of understating the fact if I say that not more than five per cent. of the benefit accruing out of these protective tariffs go to all these communities combined. Of course, I need not now emphasise that this is manifestly unjust and we must see that this injustice is not continued. I shall, therefore, urge upon this House that the time has come when this Assembly and this Government as the supreme executive of India should take a hand in this matter and see that the fruits of the sacrifices made by all communities alike are shared by all communities in the same proportion.

The only question that remains for me to deal with is how to give effect to this amendment. I have only this much to say in this regard. My friend, Mr. Gadgil, contemplates measures, legislative and otherwise. He contemplates certain legislative measures and probably certain administrative orders also by the help of which he hopes to achieve his object, that is, to prevent companies and concerns, the capital, membership, control or management of which is not predominantly Indian, from taking advantage of the protective tariffs. I suggest that if the conditions which he wants could be imposed, then the conditions I propose could also be added on to the same measures of legislation and administrative orders. This is all I have to say in support of my amendment, and I commend it to the House for its unanimous acceptance.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

" That the following words be inserted between the words ' Indian ' and ' from ' in the Resolution :

' or which do not employ all Indian communities in due proportion in their services and labour '."

The Resolution with the amendment will then read :

" That this Assembly recommends to the Governor General in Council that measures, legislative and otherwise, be taken immediately to prevent companies and concerns, the capital, membership, control or management of which is not predominantly Indian, or which do not employ all Indian communities in due proportion in their services and labour, from taking advantage of protective tariffs imposed to foster the industrial development of this country."

The discussion will now go on both on the Resolution as well as the amendment.

Mr. N. M. Joshi (Nominated Non-Official) : May I suggest, Sir, that the Government of India should indicate their attitude first before the discussion proceeds further ?

Mr. F. E. James (Madras : European) : Sir, I find myself in disagreement both with the Resolution as also the amendment moved by my friend, Mr. Essak Sait. With regard to his amendment, I should like merely to say this, that it is so wholly impracticable that no Indian or European businessman could possibly run his business on those lines. He has referred to the Railways, but he surely must remember that there is a difference between the great railway organisation of this country and competitive business. Whereas it may be possible through the influence of the State to lay down for the Railways, which they control, some communal proportion for employment, that is not possible as far as business enterprises are concerned, and my friend knows it perfectly well.

Now, the Resolution refers to measures, legislative and otherwise ; if wants immediate steps to be taken ; it seeks to prevent companies and concerns whose capital, membership, control or management is not predominantly Indian. The first question, therefore, is, as to whether the term ' Indian ' is intended to exclude all but Indian nationals. If so, it is highly objectionable from our point of view as it would drive all British concerns and many Indo-British concerns which are operating under protective tariffs completely out of business. Perhaps that is the object of the Mover of the Resolution, and in his speech, I think, he made it perfectly clear that it was his object,—to drive out all foreign capital and enterprise from this country, whether British or not. Now, Sir, this proposal goes beyond anything that has hitherto been suggested in all the discussions that took place on the Constitution of India during the past ten years. I want to ask the House to bear with me for a moment if I refer to recent history relating to commercial discrimination. First of all, let me begin with the Nehru Committee of 1928, which contained the following paragraph :

" As regards European commerce, we cannot see why men who have put great sums of money into India should at all be nervous. It is inconceivable that there can be any discriminatory legislation against any community doing business lawfully in India."

The successors to the Nehru Committee in politics appear to have forgotten that. Then, in dealing with fundamental rights, they go on to say that : " all citizens were to be equal before the law and possess equal civic rights ", and a citizen is defined as being " a subject of the Crown who carries on business or resides in the territories of the Commonwealth ". This Resolution, therefore, is wholly at variance with the Report of the Nehru Committee.

[Mr. F. E. James.]

Now, Sir, let me remind the Government of India of their attitude on the matter as contained in their Despatch to the Secretary of State, dated September 1930. This is what they said in their Despatch :

" Subject always to India's right to receive reciprocal treatment, citizens of any part of the Empire should be allowed to enter India freely, to engage freely in any trade, business, profession or calling, and when established in India to receive just treatment."

That is of course subject to reciprocal treatment. They go on to say :

" There are enterprises which Indians regard as national and which are at present mainly or wholly in British hands. It would be idle to expect that they would be content for an indefinite period to remain without their appropriate share in the conduct of these enterprises, and if the methods at first proposed in order to satisfy Indian hopes must be ruled out because they involve injustice, or are inconvenient with the position which Great Britain holds in India, Indians may fairly ask that the British community should co-operate in finding other methods to bring about the desired result."

They have co-operated in an increasing degree during the past nine or ten years, and anyone who knows anything about the inter-relationship between the Indian and European business communities knows that the extent of co-operation between Indians and Europeans in business, the extent of Indian co-operation with British enterprises has steadily increased. I could quote many cases of European firms who have at a comparatively small premium made large blocks of shares available to Indian shareholders. I am reminded of one case in which European enterprise having spent over 60 lakhs, without any return, in building up an industrial enterprise in this country, gave shares at a small premium to Indians only so that they should co-operate in the enterprise which had been started as a result of European faith in the future of this country.

Now, Sir, let me refer to the proceedings of the Second Round Table Conference, when the following paragraph was adopted as part of the Report of the Minorities Sub-Committee :

" At the instance of the British commercial community the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India, and the rights of Indian born subjects, and that an appropriate convention based on reciprocity should be entered into for the purpose of regulating these rights."

I shall refer to that proposed Convention briefly in a few minutes. The paragraph goes on to say :

" Some members of the Committee, however, contend that the future Government should not be burdened with any restriction save that no discrimination should be made merely on the ground of race, colour or creed."

Now, Sir, what has been the attitude of the British commercial community to this question of discrimination ? I will here quote from the memorandum which was presented to the Joint Committee on Indian Constitutional Reform by the Associated Chambers of Commerce. This memorandum states :

" Statutory freedom to participate in all commercial and industrial activities in India on an equal basis with Indian commerce and industry has been the consistent contention of the British Delegates, on the grounds that British subjects domiciled in the United Kingdom and Northern Ireland are in a special position in India in so far that the relationship between Great Britain and India cannot be reflected in the commercial sphere in other than full national rights to His Majesty's subjects of each country. Indian trading interests are accorded unbiased treatment in Great Britain and it was generally agreed at the Round Table Conference that there should be no discrimination against the British commercial community in India."

The Associated Chambers of Commerce went on to discuss the suggestion of a Convention regulating trading rights between India and Great Britain on a reciprocal basis, but it had been impracticable at the present stage in the development of the constitutional relationships between the United Kingdom and India. In the Report of the Indian Fiscal Commission of 1921-22, to which reference was made by the Honourable the Mover of this Resolution, the following passages occur :

" If it were true that employment of foreign capital would merely benefit the foreign capitalist, and would not benefit India, no one would hesitate to condemn the use of foreign capital, but, when the matter is really examined, there can be no doubt that, though the foreign capitalist may get his profit, the main advantage from the employment of foreign capital remains with the country in which it is employed. In the case of India this is particularly clear."

" If, however, legislation is enacted putting obstacles in the way of the employment of foreign capital, India's credit abroad will be injured and the British investor will also become shy (incidentally the Indian investor also). The result will be that India will not be able to obtain the money which she requires both for public and private purposes, or will only be able to obtain it at materially higher rates."

Honourable Members are aware that as a result of the findings of the Fiscal Commission a Committee known as External Capital Committee was appointed in 1924 dealing with the replacement of restrictions on and differentiation of external capital. The following important paragraphs in their Report occur :

1. " Where the concession is general, as in the case of a protective tariff (and this would include practically every industry in India, as a revenue tariff without a corresponding excise has a protective effect) it is impracticable"—note the word 'impracticable'—"to effect any discrimination. No feasible suggestions for such discrimination have been suggested to us, nor have any occurred to us during our discussions."

2. " Where definite pecuniary assistance, such as a bounty, is granted to any particular undertaking, we consider that discrimination is feasible, and we agree with the Fiscal Commission and the Legislature that no such assistance should be granted to any company, firm or person not already engaged in that industry unless :

I. Reasonable facilities are granted for the training of India, and

II. In the case of a public company unless—

(i) It has been formed and registered under the Indian Companies Act, 1913.

(ii) It has a share capital the amount of which is expressed in the Memorandum of Association in rupees.

(iii) Such proportion of the Directors as the Government may prescribe consists of Indians."

Their third main recommendation referred to concessions such as mineral concessions, and in regard to the granting of those, their view was that no definite rule could be prescribed. It must be a question in each case whether it is better from the point of view of national interest that a concession should be developed by external capital or left until indigenous capital may be prepared to develop it. Such concessions are only to be granted to external capitalists when it is clearly in the national interest that they should be developed. Now, Sir, with the one exception of the provision in the case of a public company that such proportion of the directors as Government may prescribe must consist of Indians, the European commercial community has always been prepared to align itself with the findings of this Committee, but that particular provision we have always objected to as being in fact racially discriminating. From one point of view that provision is perhaps the least important of all the recommendations.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has already spoken for fifteen minutes.

Mr. F. E. James : I wonder if I may ask for your indulgence and the indulgence of the House for five minutes more.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member should try to conclude his speech as soon as possible. The Chair will give him some more time.

Mr. F. E. James : In these matters, in making its recommendations to the Joint Parliamentary Committee, the Associated Chambers of Commerce made it clear that they regarded the protection sought as vitally important and considered that they were demanding no greater measure of security for fair treatment than was dictated by ordinary business prudence. On the other hand, and I would like to emphasise this, we have always pointed out that our concentration on this aspect of constitutional reform does not prevent us or did not prevent us from giving our general support to the recommendations of His Majesty's Government, recommendations which we were aware would lead to self-government and the placing of the ultimate welfare of business interests in the hands of Ministers responsible to the Indian Legislature.

At the Round Table Conference Mr. Gandhi, while he dissented from the formula of the Minorities Sub-Committee, "associated himself completely with the British merchants and European houses in their legitimate demand that there should be no racial discrimination" and even went so far as to suggest a general formula to the effect that no disqualification not suffered by Indian-born citizens of the State should be imposed upon persons lawfully residing in or entering India merely on the ground of race, colour or religion.

Now, Sir, in the Government of India Act there is a chapter on "Discrimination". I would like to remind the House that this protects companies carrying on business in India at the time of the Act from discrimination, but a clear distinction is made between such companies and those companies which, at the time of the passing of the Act, were not carrying on in British India any trade which is encouraged by grants, bounties, or subsidies. In the latter case, the Legislature has the power to impose conditions upon such companies, should they wish to carry on such trade before they can be said to qualify for the receipt of any portion of the bounty or subsidy.

Sir, I have already said that in past years there has been increasing association between Indians and Europeans in business enterprises in this country. There never was a time when, generally speaking, the relationship between Indian and European business was so friendly or close. The tendency is for this association to become even closer and no one can say that European business has not made every effort to adapt itself to the changing conditions of the country, to associate Indians with its enterprises and to use the manpower of this country wherever it is available and qualified. We do believe that in the cultivation of goodwill lies the best safeguard of all. But resolutions such as this force us to look to our statutory safeguards for protection, a process that is not in the interests of India any more than it is in the interests of our community. I, therefore, hope that the House will reject the Resolution.

Mr. N. M. Joshi : I rise to a point of order. This has been raised several times. It is this, that during the discussion of non-official Resolutions, the Government of India ought to take part in the discussion and indicate their attitude at an early stage. You have yourself stated several times that this is absolutely necessary for a proper discussion of the non-official Resolutions. I, therefore, request you to ask the Government of India to be reasonable in this matter and help the proper discussion of the non-official Resolutions. I know, Mr. President, that the Government of India many times treat this Legislature as a farce. I hope, Sir, they recognise that this is not the right thing to do—to treat this Legislature as a farce.

Mr. President (The Honourable Sir Abdur Rahim) : As regards the point of order that has been raised, it has been ruled more than once that it is desirable for the Government to state their case as early as is practicable, but the Chair cannot say that in this particular case Government have waited too long.

Babu Baijnath Bajoria (Marwari Association : Indian Commerce) : Sir, before I come to the main Resolution I would like to deal with the amendment of my Honourable friend, Mr. Essak Sait. He wants to introduce the principle of communalism, I would say, the cancer of communalism, even into business enterprises and this principle cannot be condemned and deprecated too strongly. It is neither desirable nor practicable. I can say that it is absurd that appointments in private enterprises, both as regards service and labour, should be made on communal grounds. I know that he is good enough to restrict this communalism only to protected enterprises, because this Resolution is restricted only to those enterprises. How is it possible for the owner of a private enterprise to find out the percentage of each and every community. There are numerous communities in India. There are Sikhs, Christians, Europeans, Anglo-Indians, Jains, Muslims and others.

An Honourable Member : Marwaris.

Babu Baijnath Bajoria : Marwaris are Hindus. They have never claimed that they are different from the Hindus. If you take it by province, then you can also say there are Mahrattas, Bengalis, Tamils, Telugus and so on. I must give my friend the credit for having had the courage to move this amendment. Then again this amendment is absolutely vague. First, he says that all Indian communities should be represented. That means that each enterprise will have to take a census of the particular city or district in which the enterprise is situated, or it may even be the province or the whole of India. What the communities are is not mentioned. Secondly, it says 'in due proportion'. He has not defined what is a due proportion. Is that on a population basis or educational basis or the basis of any technical qualification necessary for that particular enterprise? Nothing is mentioned there about it. Then his amendment requires this communal restriction not only in services but also in labour. I do not know how Mr. Joshi would like.....

Mr. N. M. Joshi : I have no objection.

Babu Baijnath Bajoria : I would like to know from Mr. Joshi whether at the present moment in Government workshops, in Government enterprises, recruitment to labour is on a communal basis.

Some Honourable Members : Yes.

Babu Baijnath Bajoria : It may be in regard to service but it is not the case in regard to labour. As regards private enterprise, it may be European-owned or Indian-owned or Parsi-owned or Muhammadan-owned. There, there is no discrimination whatsoever. In certain branches Muslims are more expert and skilled and they get much more employment in that branch, whereas in other departments, labour belonging to other communities may be more expert. As regards the recruitment of labour at present, there is no discrimination whatsoever and I do not think there is any grievance on the part of any community whatsoever on that score. Then, again, I cannot understand this. If the enterprise is started and financed and run by a particular community, why on earth facilities should not be given to the members of that particular community. Otherwise, there will be very little enthusiasm or interest for him to start that particular enterprise. At the present moment the Parsi community is very enterprising in business. They have started numerous industrial concerns and if they are to employ the members of their community according to the percentage basis or any proportion whatsoever, then they will be able to employ only a very negligible number. Members of the Parsi community have got a right to expect that when a member of their community starts an enterprise they must look for employment in that organisation. And, similarly, if it is a Muhammadan businessman, and my friend, Mr. Nauman, is himself a businessman, then he must be employing more than a due proportion of the members of his community. It is absolutely ridiculous and absurd that a proposition like this should be placed for consideration before this House.

Now, I come to the main Resolution. I have got every sympathy with this Resolution. I quite realise there is some difficulty on account of the clauses in the Government of India Act which restrict commercial discrimination and it was pointed out during the debate on the Insurance Act that we cannot discriminate against the British. British enterprise is no doubt very necessary and desirable. In the debate on the Insurance Act it was pointed out by Sir N. N. Sircar that account of the interpretation of the Government of India Act, even white Britishers will be considered as brown Indians and so, I think, here also wherever the word 'Indian' is meant, it will include the Britishers also but it will exclude other Europeans and foreigners, such as Swedish, German, Japanese and Americans and so on. If this is the interpretation and if it is made more clear, then I think Mr. James will withdraw his opposition.

Mr. F. E. James : I would like to point out that the Mover of the Resolution made it perfectly clear that that was not his interpretation.

Babu Baijnath Bajoria : If the House makes that clear by an amendment saying—predominantly Indian or British—then I think that will meet your objection.

Mr. F. E. James : You can move that amendment.

Babu Baijnath Bajoria : My idea is this. Here in India, the industrial regeneration has been made possible firstly by the Britishers and in the last 15 or 20 years Indians have come to the front also. Of course, I would like that Indians should take greater and greater share in the industrial regeneration of this country but, at the same time, we must remember that Indian capital is shy. It was very shy before. It is not so — before but until Indian capital is forthcoming freely,

we cannot fully develop the resources of this country and industrialise it. The External Capital Committee also came to the conclusion that external capital is necessary for the development of Indian industries and if external capital is needed, I would prefer to have British capital rather than any other foreign capital in this country. The companies which the Britishers form here must also be registered under the Indian Companies Act and they must have half the directors Indian. Why not directors ? They will have full control, and they will be as good directors as any. So, Sir.....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member's time is up.

Babu Baijnath Bajoria : If you will kindly let me finish this sentence,—so, Sir, I say Indians and Britishers, working shoulder to shoulder, should develop the industrial resources of this country. With these observations I support the main Resolution and oppose the amendment moved by my Honourable friend.

Mr. Muhammad Nauman (Patna and Chota Nagpur *cum* Orissa : Muhammadan) : Mr. President, the Resolution embodies a principle that is being practised in every part of the world today. The policy of protection necessarily means that the country wants to build up its own industry and its own resources, to the benefit of her own nationals and her own people. What has been the basis of the protection of our industry ? The only idea behind such protection has always been the prosperity of a country and their people. Sir, if the tariff protection have only resulted into exploitation by foreigners, then it is not only useless but leads to the vital drainage of Indian finance, resources and other things. Sir, I would just like to make one observation on the speech which my Honourable friend, Mr. James, made only before I got up. He says, it is sometimes impracticable to confine the benefits to Indian industrialists only as British capital has done a lot of good by having been invested here and he remarked that it was unjust to bring in the question of discrimination. I very much appreciate that he has taken up the point of discrimination and he expects that Indians should not discriminate against the European mercantile community. Sir, we never want discrimination. He has also quoted Mahatma Gandhi and other people and different resolutions or speeches at different places including those at the Round Table Conferences in his support, but does he realise that the foreign companies have been making a discrimination against Indians all along ? What has been the treatment by the British Banks or the other Foreign Banks in this country ? Have they given Indian industrialist the same amount of facilities and on the same terms as they have done to foreign companies ? Not at all. Sir, I for one, who has been associated with different Indian commercial organisations and Chambers of Commerce in Calcutta and other places, know for the fact that Indians cannot get one-tenth of those facilities which the European firms do get in spite of their probably having no status in this country. So the position is this that it is the European commercial community who is responsible for discrimination. We certainly want co-operation and if they are prepared to take away discrimination from their own side, we will not hesitate to take away the idea of discrimination from our side. However, I hope Honourable Members do realise that the Government of India impose these protective

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duties at the cost of the consumers and the consumers make sacrifices in the interest of the entire prosperity of this country. For example, Java sugar could be imported into this country and sold to consumers at about Rs. 4 per maund, but it is being sold to them at about Rs. 11 per maund and the consumers are making a contribution of a few crores of rupees to the different industries only to develop the resources and benefit their nationals. Can we be happy if people like Begg, Dunlop and Company and Bata and Company and other foreigners thrive who do not show any respect for our own interests and who are not at all careful about prosperity of this country. Never, Sir, we cannot tolerate such state of affairs. European enterprises are financed by the Banks by all sorts of supports, they receive advances even without any security and without documents, while if we go in for establishing an industry and put up say ten lakhs of rupees and ask the Banks to finance us for our output even against hypothecation of stock they say, "No, we cannot, we want collateral security and gilt-edged security, and so on", but I know they do not want anything like that from the European merchants for whose exploitation they exist in this country.

Babu Baijnath Bajoria : But there are Indian Banks !

Mr. Muhammad Nauman : They are not of that calibre. Can my friend point out any bank which can compete with Lloyds, or the Chartered Bank, the National Bank or New York City Bank ? The Central Bank is a poor analogy with any of these European Banks in this country. Now, Sir, my point is this, that when the consumers are making sacrifices, they have a right to see that their country will be benefited and that discrimination will not be allowed by the foreign people to be continued in this country at our cost. We do not want to give foreigners a ground for exploitation at consumers' cost in India.

Regarding this particular amendment of representation of all communities in services, I only want to suggest this that to Mr. James it may appear a little impractical as it has appeared to Mr. Bajoria. I have got great respect for both of them but I think that with a little effort they will realise that it can be made possible. We do not suggest that by giving communal proportion, every penny should be so adjusted as would give to different communities their due proportions. Speaking about Mussalmans, supposing there are five per cent. of them in a province and if you have given them 12 or 13 per cent. or even 17 per cent. of the appointments, it would not make much difference. The industrialists ought at least be in a position to satisfy us and the Government that they are not excluding that community whenever opportunity arises and whenever they are in a position to give them a certain amount of support. In the same way, supposing an industry is being run by the Mussalmans or by the Hindus, if they can only give all communities their due proportion or assure them of their sincerity in the matter all would be satisfied. It may be quite possible that the Musselman merchants may not get able Hindus in a particular area and, therefore, may not be able to give them the proportion to which they are entitled or the Hindu industrialists may not get as many Mussalmans as they should, but at the same time if they do give them some reasonable proportion of appointments, it is quite all right. In this connection, I would remind the House of the speech that I made during the Budget

debate on a cut motion of the Commerce Department particularly moved by me for this purpose. I know that Tata and Sons are not employing even five per cent. Mussalmans. I am sorry my Honourable friend, Sir Cowasji Jehangir, is not here to tell me how this has happened. We know that the Tatas are prospering at consumers cost and are making a profit of five or six crores only because the continental iron is not being allowed facilities for being imported into this country because of high tariff walls which are raised to save Tatas, otherwise the Tatas will go into liquidation to-morrow. What business the Government have to give them that protection if the people who inhabit this country are not receiving any benefit from them? Why should the people of this country make any sacrifice for them, when they cannot reap the benefits in any proportion. Now, Sir, I do not know much about the Ahmedabad mills but from the reports which I have received from different Associations of the Mussalmans in that part of the country I am informed that they are not employing even three or four per cent. Mussalmans. I do not say that they should employ Mussalmans as their engineers or their managers but what I do want is that a gesture should have been made from their side that a regular effort has been made to give appointments to Mussalmans according to their proportion. In some cases they may not be able to get the proportion which would only show that a particular community is not qualified to occupy that position in that particular industry or in that particular mill. I am perfectly willing to accept that position. But what I have noticed is that no effort has been made either by the European industrialists, like Burn and Company, Bird and Company, or by the Hindu industrialists of Ahmedabad or by Tatas to distribute appointments according to the proper method. Mr. Bajoria said "what about the labour?" There is no harm if effort is also made to recruit labour according to this proportion. This has been possible in many Government Departments or at least an effort is being made everywhere. I know of the Gun Factory in Bengal where they take all due care to employ the labour according to the communal proportions. This has also been made possible in the railways although we are not satisfied that the Mussalmans have been employed according to their proportion, but things may improve soon.

Babu Baijnath Bajoria : How did you get information about the Gun Factory? Nobody is allowed to go there.

Mr. Muhammad Nauman : But they have got an Association. It is not necessary to go into the factory to get that information. They have got an Association and I hold letters from them to say that the Mussalmans are being employed according to their proportion. There are some complaints here and there but that cannot be helped. My contention, therefore, is that when an industry is being run at the cost of the Indian consumers, they are certainly entitled to reap advantages in the same proportion as they inhabit their country and participate in the sacrifice which all are making by consuming the expensive goods. For this reason I congratulate my Honourable friend, Mr. Essak Sait, for having moved this amendment and I hope Government will take up this matter in right earnest and take such measures as may be necessary to advise the industrialists that in preparing their list for employees they should always take care that they should give to different communities

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their due proportions in so far as it may be practicable from their side. I do not want that if they cannot get a Muslim and if they can run that industry only through some Hindu experts, they should close the industry because a Muslim has not been engaged. That is not what I mean. I only meant that if circumstances are such that Muslims can be employed they should be employed according to their proportion. I do not see any difficulty in adopting this method. It is quite easy. Every industry can ascertain from the Government what are the different proportions of different communities in this country and they can proceed on that basis.

Babu Baijnath Bajoria : You mean an all-India basis.

Mr. Muhammad Nauman : If it is difficult for the provinces it must be an all-India basis. I do not suggest that the all-India basis should always be the criterion. That is for the Government to decide whether it should be an all-India basis or the provincial basis. What have Government done in the railways? They have provided for a percentage of 25 out of every 100 reserved for the Mussalmans on the railways but different railways have been given different proportions according to area of population where they run.

Sir, I do not want to take more time of the House. I only want to place before the House this that when an industry is protected at the cost of the consumers, which is clearly the case, we would not like to see that the fruits of that spoil is distributed mostly to the foreigners and further that we would not be contented if they should not be distributed to the different communities inhabiting this country in their due ratio and proportion. That is my only contention and nothing else.

One word more about discrimination. We are not anxious at all to have discrimination with foreigners. The foreigners are having a discrimination and have been practising it from time immemorial and unless they change their tactics and co-operate with us on an equal basis and not co-operate with us as our masters, it would be very hard for them to continue their commercial exploits in this country any more. With these remarks I support the Resolution with amendment.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour) : Mr. President, I had no intention of delaying the reply on behalf of the Government to this Resolution, but I think my friend, Mr. Joshi, was not quite fair to me when he suggested that such delay was being intentionally caused. You will find that the speech that was made in support of this Resolution was made in my absence and I was not in the House. I was, therefore, anxious to get at least one or two speakers who would support this Resolution and give reasons for supporting it before I could usefully intervene in this debate. That was the only reason why I delayed the reply which I have to make on behalf of Government.

Now, Sir, the Resolution refers to foreign companies and I would have *prima facie* interpreted the Resolution in the manner in which Babu Baijnath Bajoria interpreted it as concerns which are neither Indian nor British, but the speech of the Honourable the Mover of the Resolution

made it amply clear that what he had in mind was companies which were not Indian in the strict sense of the word. The Honourable the Mover of the Resolution made a disquisition on the policy of discriminatory protection. He said that that policy which has been adopted by the Government of India for the last 15 years was a policy which was discriminating against Indians. I wish, Sir, that this sort of remark had been avoided because if there has been protection granted by the Government for various industries, it was certainly to help Indians and to help Indian enterprises in this country and not to discriminate against Indians. I think it will be necessary for me to explain to the House, if indeed such explanation is necessary, what is meant by this policy of discriminatory protection. A more happy phrasing of that policy would have been protection granted with due discrimination, that is to say with discrimination exercised in the interests of various concerns and of various Indian interests which might be affected by that policy of protection.

The Indian Fiscal Commission laid down the essential conditions which should be satisfied before protection should be granted to any industry in this country. Those conditions were three in number as Honourable Members of the House are well aware. First, that the raw products for the industry, the main raw products which are required for the industry should be available in this country, secondly, that there should be reasonable chances after a certain period of protection for the industry to establish itself on its own legs without a high tariff wall. That is to say that it should not be an industry which must perpetually and eternally rely on a high protective tariff wall so that it can conduct its concern without the fear of competition from outside. And, thirdly, the industry must be one which without the help of protection is not likely to develop. The burden on the consumer should be reasonable and not unreasonable. A great deal has been said about the consumer paying for protection and the unfairness of a foreign company walking away with the benefits of protection. My Honourable friend, Mr. James, related the past history of this question. He referred to the Indian Fiscal Commission, the External Capital Committee and various other memoranda by Government and by private individuals on the question of foreign capital. This controversy whether foreign companies should be allowed to establish themselves under a tariff wall of a protective nature has been going on in this country for the last nearly 20 years. Indeed the Indian Fiscal Commission Report—the minority report—raised the very question that has been raised in this House on this Resolution and the minority report suggested that when protection was granted to any industry, foreign concerns should not be allowed to establish themselves under that protective wall because the benefit of that protection would go to others than those who were contemplated by the scheme of protection. The same question was later raised in the External Capital Committee report. Now, Sir, those objections have been very carefully considered and very fully met by the majority report of these Commissions. But I will mention very briefly my viewpoint with reference to these objections. Protection is granted to an industry for various purposes. It is granted to an industry in order to develop among Indians a scientific training, the habit to control industrial enterprises, an equipment which is necessary for running these great industrial enterprises. Protection is granted so that labour could be more usefully employed and a diversi-

[**Diwan Bahadur Sir A. Ramaswami Mudaliar.**]

fication of the employment of labour may take place. Protection is also granted because a certain profit will ensure to the Indian capitalist and the Indian capital will thereby be attracted. I want the House to consider each of these aspects from which protection is granted in its proper perspective. The speech that has been made on this Resolution and the speeches which have since been made in support of it suggest that the only idea of protection is to give a certain amount of profit to the capitalist. I venture to state very respectfully but very emphatically that **that was one of the last considerations in granting protection (hear, hear).** The main considerations were otherwise. The employment of Indian labour in these highly technical industries, the improvement of technical qualifications of the Indian employee, the conditions and wages of the employees being improved, these were, as far as I can see, far more relevant considerations in the policy of industrialisation of the country.

Mr. N. M. Joshi : It is a right policy, but that policy was never followed.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : I would have been surprised if my Honourable friend, Mr. Joshi, representing labour, did not rise to make this interruption. He knows very well, taking the industrial enterprises on one side and the agricultural enterprises on the other side and comparing the wages and conditions of life of the industrial labourer with those of the agricultural labourer that however much he might have raised these questions in the past and however much he may be disappointed and discontented with the reception that they have received, the fact still remains that the industrial labourer in this country in protected and unprotected industries is far better off than the agricultural labourer.

I was explaining the position with reference to protected industry because it is with protected industries that this Resolution deals. When the Tariff Board grants protection, on what basis is the quantum of protection required decided ? What are the facts that enter into the calculations of the Tariff Board when it arrives at the amount of protection that is required by an industry ? Let me explain the position, as I have first-hand knowledge of the methods which are employed by the Tariff Board in arriving at a decision on this issue. The industry that requires protection is asked to produce before the Tariff Board the calculated costs of its production. The costs of raw products are taken into consideration, the cost of labour at whichever level it is employed, and very often at a higher level than those employed in most concerns which want protection is taken into consideration and finally the profit on the capital invested is taken into consideration. That profit was at one time as high as eight per cent. I said as high as eight per cent. but to be fairer, I should say at eight per cent. in view of the relative interest bearing concerns which were then in existence, that is to say in view of the rate of interest both of the Bank and of the Government securities which then prevailed. Latterly, during the last four years at least, the House must be aware that the Tariff Board calculates the profit on capital at six per cent. Therefore, Sir, in this Resolution where we talk of foreign companies carrying away the benefits of protection, we really mean if the policy of protection advocated by the Tariff Board and accepted by the Government is being strictly carried

out we really mean that the interest at the rate of six per cent. on the capital that has been put into this country by foreign companies goes out of India. Let us have no misconception on this point : that somehow or other foreign companies are walking away with a great deal of advantage and that the consumer is paying for all that advantage which they are carrying out of this country. The consumer pays for the labour that is employed, for the wages that that labour requires, the consumer perhaps pays for the inefficient way in which at the early stages when protection is required that labour has necessarily to work. The consumer pays for the raw products which are being bought in this country. My Honourable friend gave a very good illustration,—sugar, and he said that the consumer could have had that sugar at very much less cost if it had to come from Java. That of course is the consumer's point of view and I recognise that point of view. But then let us be fair also. What is the profit which, if the scheme of protection is scientifically and properly worked, the capitalist will get from this ? The consumer pays in that case for the sugar cultivator in the first place the price of whose sugar-cane has been fixed in some provinces at least at a certain limit ; for example, in the United Provinces. The consumer pays for the labour that is involved in the sugar factory ; and finally, the consumer pays for whatever profit the sugar concerns are making out of it. And if all that I hear and if all the complaints that are addressed to the Government of India on the subject today are correct, the profit of these sugar concerns is very little indeed. I do not myself recognise that point of view or accept it, but I am only pointing out that it is that little profit which the few foreign companies that are engaged in sugar production today, are carrying out of the country,—using that word "foreign" in the widest sense in which even the Mover of the Resolution has ventured to use it.

Now, Sir, so far as the training of Indians is concerned, to the best of my knowledge, with such available information as is before me, I cannot see how the training of Indians in these protected industries is undertaken to any less extent in these foreign companies which are in this country than in indigenous companies. If statistics were to be taken and an actual analysis of the figures were to be made I am told that the number of Indians is not very much less or indeed any the less than those that are employed in purely indigenous concerns to which the Honourable the Mover referred. Sir, my Honourable friend the Mover said somewhat lightly that there was no difficulty about Indian capital being attracted to these enterprises and that the time had, therefore, come when we must put an embargo on foreign capital coming into the country. I think the answer to that was given by my Honourable friend, Mr. Bajoria, and I would only underline that answer by suggesting that whatever may have been the position a year or two ago there are indications today that Indian capital is not quite so enthusiastic about putting its money in ventures, even under a protective tariff, as might have been the case sometime back, that there is a tendency to again fight shy of industrial concerns owing to a variety of reasons not the most important of which is the fact that they may come into competition with foreign companies. There are other circumstances, and I need not dilate on them, which have made Indian capital a little more shy today than it was a couple of years back.

Mr. Muhammad Nauman : Has the Honourable Member made any inquiries as to the conditions in which the European companies are working and whether or not the capital which they invest is smaller than the facilities they get from the banks ?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : I am only concerned with the facilities which Government are giving to all concerns alike, whether foreign or Indian, and I have neither the opportunity nor do I think it is my concern at this stage to go into the question of what facilities they may receive from members of their own community or their own countrymen.

Mr. Muhammad Nauman : They have monopolised the finances.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : Now, Sir, there is another proposition that I should like to state. The Indian Fiscal Commission itself visualised the possibility that in the scheme of protection internal competition would arise and while the tariff wall may remain, the internal level of prices will be far different from that which would be indicated by the mere existence of a high tariff wall. If internal competition is the desired aim of the policy of protection it seems to me clear that whether it was foreign companies or Indian companies that on account of their efficiency reduced their costs and therefore reduced the level of prices of the commodities concerned, it would be an advantage to the consumer on whose behalf I have heard more than one Member raise his voice today. The moment we erect a high tariff wall a corollary of that must be to encourage as far as possible internal competition so that the prices may not be kept at a high level. But there was a danger,—I do not say it has come about,—which the Indian Fiscal Commission envisaged and to which I should like to refer. Under the protective system companies may form combines ; there may be an attempt to form a monopoly. Indications are not wanting that under the protective tariff today in one or two industries at least there are attempts to form combines, trusts, monopolies ; and if the Indian manufacturers all join together and form that monopoly surely the person who will be most affected and the person who will be the least benefited will be the consumer who has paid for this protection all along the line. Now, Sir, it is possible that when that situation arises the reduction of the tariff may be proposed and by the reduced tariff the evil of that monopoly or combination may be removed. But Honourable Members are aware that once the protective duty is raised it is a very difficult proposition in this House or in any House in this country or any other country to come before it on the ground that such a monopoly has been created and ask for a reduction of that high tariff wall. Under these circumstances, it seems to me that the incursion of a foreign venture which carries out its business and which would be able to check to some extent the monopolistic tendencies that may develop is a safeguard as much to the industry as to the consumer himself.

Then, Sir, my Honourable friend, the Mover,—the subject is vast and as it is not possible to cover all aspects of it I must necessarily be brief, —made one very important statement from his point of view. He said :

“Sir, if I were the Honourable the Commerce Member I would at once put a stop to all non-Indian companies.”

It may be so : it may be that he thinks that that is a right course to follow. But so long as I am the Commerce Member I can say definitely that I shall take a far different line from that. And who will be most affected by such a short-sighted policy ? Sir, there are foreign companies operating in this country. Most of them are operating under what is termed the most favoured nation clause. India has made commercial treaties with various countries ; in fact today the pressure from Indians abroad is that the Government of India should move faster in this matter and make such commercial treaties with countries with which it is not in commercial alliance already. I have before me now not only an appeal from the Indian residents in the United States of America but their appeal has been fortified and strengthened by resolutions of the Federation of the Indian Chambers of Commerce, that an early attempt should be made to enter into a treaty of commerce with the United States of America, one of the essentials of which would be the incorporation of a most favoured nation clause to the subjects of both countries. I will just read a sample of that most favoured nation clause from one of the treaties :

"The subjects of each High Contracting Party shall be entitled, on the same terms and subject to the same laws and regulations as subjects or citizens of the most-favoured-nation foreign country to carry on in the territories of the other High Contracting Party their commerce, manufacture, industries, professions and occupations and to trade in all kinds of merchandise of lawful commerce, to employ agents of their choice, and generally to do everything incidental to or necessary for trade."

Now, Sir, we know that there are a number of Indians in all parts of the world, that they are constantly appealing to us for protection if at any time any discrimination is shown against them, either in commercial matters or otherwise, and my friend says without the slightest regard to the future of those Indians trading in those countries that, if he were the Commerce Member, he would immediately put an end to all non-Indian companies in this country. Sir, that is an argument which, I venture to think, cannot be accepted by this House.

Then, my friend, Mr. Essak Sait, has moved an amendment to which in the brief time I have, I feel I should make some reference. The Honourable the Mover of the Resolution in the course of his speech made a somewhat cryptic utterance which I could not understand till indeed I came upon the amendment moved by my friend, Mr. Essak Sait. He said : "it is not merely that the English capital has come but the English capitalist also has come with his close control, with his patronage, and there are many other things in which by showing their patronage they can create trouble between caste and caste and community and community". I did not understand that statement when I read it for the first time, but the amendment that was moved by my friend, Mr. Essak Sait, gave some indication of what was in the mind of both these gentlemen, but in exactly the contrary direction. Now, Sir, the position has been very clearly explained by my Honourable friend, Mr. James. The analogy of Railways is no analogy at all. It is a public utility concern, to a large extent dependent upon the Government for its capital, and rules have been framed with reference to that. To stretch that to private companies and to ask private companies, by legislation or otherwise, to adopt this policy, is a thing beyond the means even of the Government of India, powerful as it is said to be.

[**Diwan Bahadur A. Ramaswami Mudaliar.]**

I am not one of those who decry the question of the representation of the various communities adequately and fairly either in the services or elsewhere. My entire political education has been based on the fundamental principle that equal opportunities to all should be granted in this country (Applause) if we have to promote unity, nationalism, and those greater interests of the country which most of us who have paid any thought to the political development of this country wish to promote, and I, therefore, shall not be one of those who will ridicule a proposition like this. But may I say this, that the Honourable Mr. Nauman who spoke last has clearly given an indication of the direction in which efforts should be made to bring about this result. He asked the Government to advise commercial concerns; but what better method of conveying this advice can there be to these commercial concerns than by a speech made on the best platform in India, this House, by members of the various communities which would go forth to these industrial concerns and make them think that if good-will is to be the first essential of all trade and commerce,—and it is admitted that it is so,—whether that trade and commerce is carried on by Indians and Britishers, Hindus or Muslims, Parsis and Sikhs,—if goodwill and good relations ought to be the basis of all commerce, the appeal will certainly fail not on fallow soil, but as I hope, on productive soil, and in that hope, I commend to this House that both the Resolution and the amendment may be rejected.

The Assembly then adjourned for Lunch till a Quarter Past Two of the Clock.

The Assembly re-assembled after Lunch at a Quarter Past Two of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

Sir Muhammad Yamin Khan (Agra Division : Muhammadan Rural) :

I was very pleased to hear my Honourable friend, Sir Ramaswami Mudaliar, after a period of five years. I congratulate him on the brilliant performance he has made from the other side. What is a loss to these Benches is the gain of the Treasury Benches. He has proved himself, and I am sure he will continue to do so, a great asset to the Government Benches.

I do not want to make a long speech on the Resolution before us. It has been fully debated upon and all points have been covered. I think the policy which the Honourable Member has enunciated has got great support from many of us. Personally speaking, I should have liked this Resolution to include among the Indians the British element, and we should not ignore the fact that the Britishers have from the beginning developed India industrially to a great extent. I should have liked this Resolution to confine itself to foreign companies which are non-British; certainly no foreign company has got any right to claim a privilege which Indians want for themselves. We find that no distinction is made between Indians and Englishmen in England and, therefore, there is no necessity for us to ask that there should be discrimination against the Englishman here. We should not ignore facts. Our association with the British has been such that we cannot by one resolution or on one day cut off all relations with them. But there is one thing which

I would like the Honourable the Finance Member to take note of. The British capital which is making its income in this country—does the Honourable the Finance Member get all the income taxed for the benefit of India?

The Honourable Sir Jeremy Raisman (Finance Member) : Undoubtedly.

Sir Muhammad Yamin Khan : I suppose, according to the Bill which was passed in the last Session, a great portion of that income is not taxed here. If it is taxed in England because the man whose capital is invested in this country is resident in England—whatever income he derives here, that is to be taxed on account of his residence in England, being the world income—that portion is not taxable in this country. Therefore, India is losing in the shape of income-tax if even British capital is employed in this country. That being so, Indian revenues suffer to a certain extent. I do not say that this should not be, because it would be very hard on any person, even an Englishman, if he makes an income here and has to pay two income-taxes, one in England and one in this country—it will be very hard on him, and I was one of those people who gave full support on this point, namely, that the English people should not be double taxed and there should be relief from double taxation. But the fact still remains that the Indian revenues do suffer.

Now, we cannot ignore the very important elements which have been elucidated in his speech by the Honourable the Commerce Member today. He said that protection is given not on one consideration but on many considerations. One of them is the employment of Indian labour, to give facilities so that those Indians may be employed who would not otherwise be employed. Keeping this factor in view, I think the taxpayer who has to make a sacrifice must certainly expect some kind of return to him, and that was the object which my Honourable friend, Mr. Essak Sait, had in view. He said that if you are giving protection to private companies or any other companies, it means really that a certain amount of money gets out of the pocket of the taxpayer, and taxpayer must include all communities and interests. It follows that any particular class should not be prevented from enjoying the benefits of the protection when they have to make a sacrifice. This amendment should not be described as communal. I would not put it like that. I would not say that there should be hard and fast rule made that in every branch of employment, clerical, technical, etc., there should be employment of all communities and interests there. But certainly there should be no bar to any proper person being employed if he comes here, and if there are technical people available of one community or the other community they should be employed. I say there should be no discrimination against the Mussalmans as such and they should not be debarred from employment in the big concerns. It has become the fashion in India to make excessive demands. It is on the principle of the Persian proverb :

"Bá murgush begir ta ba tuf rasi shawad".

which means that if you ask for death, you will at least get fever. That is not really the case here. Haji Sathar Sait has said that all communities may be represented. That means that if there are people available, there should be no discrimination against them simply because they belong to a particular religion. He says that in a big firm like Tatas, there are hardly

[Sir Muhammad Yamin Khan.]

four or five per cent Muslims employed in that concern. If it is situated in a place like Orissa where Muslim labour is not available, then one can understand it. In Orissa, the Muslim population is very small and labourers cannot be found in sufficient numbers there but that is not the case where Tatas are. Of course, I quite realise that you cannot run a concern with inefficient labour. You cannot have the two things together. A commercial concern must be run with efficiency and efficiency means that you must employ men who can do the maximum amount of work with the minimum wages. That is the theory. If you take the figures of employment in the case of Tatas, you find that there is an element which really discourages the employment of Muslim labour. If Tatas are anxious to have our money for their benefit, then they must see to it that we have no grievance. As patriotic people, we want that our industries should be independent of other countries but, so far as the profits which go into the pockets of certain people are concerned, we have to be satisfied that even if they are not partial towards us, they must at least be impartial. They have got to show why they have not been able to employ people from the other communities also. This amendment of Haji Sathar Sait seeks nothing more than to draw the attention of the Government to the fact that they should be alert and see that no injustice is done to the Mussalmans as Mussalmans and they should not be at a discount on account of their religion and they should be given the same facility for earning their bread as any one else in that neighbourhood. At least that is the intention of the amendment. Of course the Resolution goes a much longer distance than that. The Indian consumers whose representatives we are should not be made to suffer unless the benefit accrues to the Indians as a whole. That is the point. If money goes from my pocket to Mr. Aney's, then I have got no grievance. But if it gets out of my pocket and goes out of India, then why should it get out of India? It should remain in India. We are really thankful to the British people that they have done a great deal to develop our own industries in this country, which would not have been developed without the help of their capital, and still, if they are carrying on, whatever may have been their motive—certainly we could not say that they were philanthropic and came in and invested their capital without any idea of making a gain, but whatever may be the fact....

Mr. President (The Honourable Sir Abdul Rahim) : The Honourable Member's time is up.

Sir Muhammad Yamin Khan : with these words, I support the proposal that this amendment should be accepted whatever may be the fate of this Resolution, and I hope that the Government will accept the Resolution in the shape as it has been put by Mr. Bajoria. They may say that they have only pinned it down to the speech of Mr. Gadgil, but, though Mr. Gadgil has moved the Resolution, yet the Resolution, if it comes on the vote of the House, should be treated as it has been debated by the House, and it should come in in that spirit as has been explained by Mr. Bajoria, and at least if the Government will act on those lines, we will be satisfied.

Dr. P. N. Banerjea (Calcutta Suburbs : Non-Muhammadan Urban) : Sir, I listened with rapt attention to the speech of the Honourable the Commerce Member. This was not his maiden speech in the Assembly for he had been a Member of this Assembly for several years, but this

was his maiden speech in his capacity as an official Member of this House. I congratulate him on the able and eloquent manner in which he spoke, but I am afraid I am unable to congratulate him on the substance of his speech. The Honourable Sir Ramaswami Mudaliar seemed to me to be obsessed with only one idea, *viz.*, the benefit that is derived by India from foreign capital and enterprise. But he failed to recognize that there was another aspect of the question. All those who have studied this question carefully and well are of the opinion that foreign capital has two aspects,—one beneficial and the other harmful to the interests of the country. Sir, I am not one of those who would ignore altogether the beneficial aspect of foreign capital in India, but it would be going too far to say that it is entirely beneficial and that it has not a darker side. The Honourable the Commerce Member rightly emphasised that the profits of industry are not the only consideration. There are other things. I entirely agree with him. He mentioned the training of experts, but may I ask to what extent experts are employed by foreign firms in the higher ranks of their labour force ? To what extent are Indians appointed in any managing capacity ?

Mr. F. E. James : To a large extent.

Dr. P. N. Banerjea : My Honourable friend, Mr. James, says that this is done to a large extent. If he can prove this by facts, I shall be the first person to revise my opinion. But so far I know, there are very few Indian directors on the Boards of European firms established in India. Then, Sir, if we look at the appointments, we will find that it is only the lower-grade appointments that go mostly to Indians. Of late, I admit there has been a tendency towards the appointment of persons on higher scales of pay, but this is merely a beginning. This ought to have gone very much further by this time. The Indian Fiscal Commission reported seventeen years ago, and they definitely said that all these things should be done,—that the firms should be registered in rupee capital, that Indians should hold a large proportion of the shares, and that Indians should be trained. But has anything substantial been done ?

Mr. F. E. James : Yes.

Dr. P. N. Banerjea : My Honourable friend, Mr. James, says "yes". Well, I must agree to differ from him on the interpretation that he would put on the word "substantial". I do not think anything substantial has so far been done. If anything substantial had been done, people would not feel so sore and my friends would not have any objection to the acceptance of this Resolution. For what are the words of the Resolution ? The words of the Resolution are "that measures, legislative or otherwise, be taken immediately to prevent companies and concerns, the capital, membership, control or management of which is not predominantly Indian, from taking advantage of protective tariffs imposed to foster the industrial development of this country". Can anyone say that the capital, membership, control, or management is predominantly Indian ? Even if my friend can prove that it is substantially Indian, I would agree with them. But I am afraid that is not the case.

Mr. A. Aikman (Bengal : European) : What about the jute industry ?

Dr. P. N. Banerjea : How many European firms are there in the jute industry, and how many persons do they employ in the higher services, and how many Indian directors do these Scottish jute concerns have ? Are there many directors on their Boards ?

An Honourable Member from the European Group Benches : See the directory.

Dr. P. N. Banerjea : What percentage ? The directory shows that the number is exceedingly small. (*Voice* : "No, no.")

This is only one aspect of the question. But we are not concerned only with British firms. British firms are non-Indian but I do admit that they come under the connotation of the provisions of the Government of India Act—section 113 and so forth. These are special privileges given to British firms. The question is whether these special privileges should be enjoyed by them. Of course it is for them to consider whether it is consistent with their self-respect to enjoy these special privileges without sharing those privileges with Indians. Then, what about the other firms which are non-Indian-owned, what about them ? The Batas, for instance, enjoy the same privileges as Indians. Why should they ? The Honourable the Commerce Member said that there are most-favoured-nation clauses in the agreements with some of the countries, but that does not apply to all countries. All foreigners, all non-British foreigners—take advantage of the provisions of the Government of India Act in order to compete and compete on unfair terms with Indian firms. This is not right. Why was protection demanded by India ? Protection has been demanded for the last thirty or forty years by Indians not to help non-Indian firms but to help Indian concerns, and for that purpose a sacrifice is made by the Indian people,—a substantial sacrifice—I was sorry to find the Honourable the Commerce Member making light of this sacrifice. Sir, a great sacrifice is involved in giving this protection, and why should protection be given unless the benefit accrues to the people of the country ?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : May I say that I have no recollection of having made light of the sacrifice involved by the grant of protection, on the other hand, I emphasised the sacrifice.

Dr. P. N. Banerjea : I stand corrected. If he did not speak lightly of this sacrifice, I will not pursue the matter further. But I do say that a great deal of sacrifice is made by the people of the country ; and for what purpose ? The purpose is that the people of the country should benefit, that the industrial development of the country should proceed. A great Englishman, who was a member of the Indian Civil Service, Sir Frederick Nicholson, once said that the industries of India should be developed in the interests of India firstly, secondly and lastly. I would like to put this opinion before my English friends and ask them to ponder over it.

Sir, the Honourable the Commerce Member said that we should have trade regulations with other countries. Surely we should have, but do other countries safeguard their own interests or not ? If they are entitled to safeguard their own interests, are we not entitled to safeguard our own interests ? Look at the question from the broader

standpoint. I would ask the Government to look at the question not from the narrow standpoint and to refer only to technical matters and certain sections of the Government of India Act and so forth. They should look at the question from the broad standpoint of justice. If you look at the question from the broad point of justice, you will find that India suffers a great deal from the present arrangements. Therefore, we want that, in order to safeguard the industrial interests of the country, it is essential that some steps, legislative and administrative, should be taken by which the foreign concerns should be prevented from reaping the benefit of the sacrifice which is made by the people of this country.

Coming to the amendment which was moved by my Honourable friend, Mr. Essak Sait, although I have full sympathy with the spirit underlying it, I am afraid the amendment, as it stands, is neither feasible nor desirable. It is not feasible because, as my Honourable friend, Mr. Nauman, pointed out, there were various difficulties in the way of giving effect to it ; and it is not desirable because we have already too many divisions in the political field and we ought not to carry these divisions into the economic sphere. It would be very undesirable to carry our quarrels into the economic field. But we should appeal to the organisers and leaders of industry themselves in order that they may give proper shares of the fruits of industry to the different sections of the community. With these words I oppose the amendment, but I strongly support the original Resolution.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions : Muhammadan Rural) : Sir, I have listened with very great pleasure to the maiden speech of my former colleague, Sir Ramaswami Mudaliar. His speech of today cannot be called to be a maiden speech in this House, but I call it so because he has been transferred and transplanted from our side to the other side which we really expected at one time because of his brilliance, because of his eloquence and because of his experience, and we are really glad to see our friend on the Treasury Benches. Sir Ramaswami Mudaliar is not a stranger to us. We have heard his eloquent speeches from the Opposition Benches for a very long time, and I think Mr. James will support me when I say that we were proud of having Sir Ramaswami Mudaliar on our side. The way in which he treated the subject today has made us proud of him. The dissertations that he gave on the tariff policy and the tariff rules and regulations are a lesson to us. If he had been on the Opposition side, I am sure he could wax more eloquent than he has been today on the Treasury Benches. However, the subject is undoubtedly a technical subject and the Resolution moved by Mr. Gadgil—I am sorry he is not here today—would have found a very good support in the House today if the Congress Benches were not vacant. The object of this Resolution was not what has appeared from the speeches of today. The object of the Resolution was to help Indian industries, and I am sorry to say that the subject of the speeches has drifted into communalistic tendencies. When my friend, Mr. Bajoria, began to speak, he at once took the subject as though it was a Hindu-Muslim subject. I am very sorry to say that every time when there is any suggestion from the Muslim League Benches or from the European Benches, it is always taken as a communal suggestion. I am very sorry for that. It is not even a European or an

[**Mr. Muhammad Azhar Ali.**]

Indian question. We do not recognise our European friends as non-Indians. I would ask my Honourable friends on the European Benches to believe me that we do not want that British interests and British capital should be driven out wholesale from India. That is not the object of this Resolution, and it is a pity that we have drifted from the real issue and have started abusing each other. The most important words in the Resolution are "prominently Indian from taking advantage of protective tariffs". Nobody can deny that India is a country for the Indians. Our European friends have got interests not only in Great Britain, but also in other European countries, and if we Indians claim here that the benefits of protective tariffs should be more for the Indians, I do not think they ought to grudge our demand. When we say that the tariff benefits should accrue to us, what we mean is that the Indians should really find that the tariff protective policy of the Government of India is favourable to them. I assure my Honourable friend, the Commerce Member, that just as the Indians have invested lakhs and lakhs in the sugar industry which ought to open the eyes of the Government of India, so I may tell my Honourable friend that Indian capital will not be shy at all if we find that the trade conditions and the tariff protective policy of the Government of India is in favour of the Indians. They will then invest more and more, and capital may not be wanting. It is not a communal question, as I said, and when my friend, Mr. Nauman, pressed this point, he made it very clear that the Mussalmans of India do not want that they should be at every stage and in every concern. What we really want is that Indians ought to be trained by European firms. They ought to have scholars and apprentices, whether they be Hindus or Muhammadans or Christians. Are not Indian Christians Indians? So, Mr. Essak Sait's amendment only seeks to give due proportion to all Indian communities. He has never referred to the Mussalmans of India only, but he has referred to all the Indian communities. He referred to all the Indian communities,—Christians, Hindus and Muslims, and Europeans too. What we say is that we as Indians claim that we ought to have all the facilities, we ought to have opportunities to invest our money. We ought to be on the directorate, we ought to be co-sharers in the companies and concerns. I am very sorry that the question has been discussed on communal lines, and I hope that Government will accept this amendment and the Resolution moved respectively by Mr. Esak Sait and Mr. Gadgil.

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhammadan) :

Sir, the attitude taken up by the Government as indicated by the speech of the Honourable Member speaking on behalf of the Government is actually deplorable. The only policy the Government of India have is the policy of might is right and when might intervenes all impracticables become practicables. The other day the Turks when they regained power asked all the companies, banks and trading concerns in Turkey to employ only Turks from top to bottom and use Turkish language. Although the demand was apparently impracticable but it became practicable and these conditions were accepted by those trading concerns. As regards the expression used by my Honourable friend, Mr. James, that it is impracticable to give share to communities in service of companies may I ask him, is it practicable or is it not discrimination to fix 40 per cent.

seats to Anglo-Indians in the services of the Telegraph Department as has just been adopted by the Home Department Resolution? What is the percentage of Anglo-Indians in the country? Is it not discrimination? Surely it is. There what is impracticable has become practicable. Mr. James's policy is to swallow the sweet and throw away the bitter. What is demanded by the Resolution and the amendment is that Indian capital and labour should be encouraged and every community in India should have a fair share. Sir, I support the Resolution as well as the amendment moved by my Honourable friend, Mr. Sathar Seth.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair has already read out to the House what the effect of this Resolution would be if the amendment is adopted. The Chair will now put the amendment first to the House. The question is :

"That the following words be inserted between the words 'Indian' and 'from' in the Resolution :

'or which do not employ all Indian communities in due proportion in their services and labour'."

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That this Assembly recommends to the Governor General in Council that measures, legislative and otherwise, be taken immediately to prevent companies and concerns, the capital, membership, control or management of which is not predominantly Indian from taking advantage of protective tariffs imposed to foster the industrial development of this country."

The motion was negatived.

RESOLUTION RE DEDUCTION OF THE AMOUNT OF PROVINCIAL EMPLOYMENT TAX FROM THE INCOME-TAX PAYABLE TO THE CENTRAL GOVERNMENT.

Shaikh Rafiuddin Ahmad Siddiquee (Chittagong Division : Muhammadan Rural) : Sir, I beg to move :

"That this Assembly recommends to the Governor General in Council that all persons who may be compelled by a Provincial Government to pay additional tax on their income under the name of employment-tax should be given relief of an equivalent amount in the income-tax payable to the Central Government and the amount so deducted should be written off against the subsidy given under the Niemeyer Award to the provinces out of the revenues derived from the income-tax and railway profits, and that necessary amendment be made in the Income-tax Act."

Sir, the Resolution is simple and does not require a great deal of explanation. By this, my intention is that the Employment Taxes which are or which may be levied by Provinces are only another form of income-tax. The provinces have all been introducing all sorts of taxes to make up their budget without the least consideration of the effect they are going to make on the general finances of individuals. The Niemeyer Award gave the provinces a portion of the Central income with two views, that is the provinces should receive central contributions from central subjects because their inhabitants made a portion of contribution to the central funds and because provincial finances had to be adjusted to make up their needs. There was definitely this idea that the provinces will not assume

[Shaikh Rafiuddin Ahmad Siddiquee.]

concurrent jurisdiction of taxing their people again for the same income. What is the position of the Employment Tax ? Sir, it is a tax on the earnings of individuals in the provinces and what is an income-tax ? The same except this that the income-tax is a taxation from the Centre. To illustrate more clearly, I would say that it amounts to this. Suppose a man has a salary of Rs. 400 per month. He pays income-tax on Rs. 4,800 which amounts to about Rs. 250 as tax and then he pays to the province in which he resides an Employment Tax of about another Rs. 200 per year on his salary of Rs. 4,800. This is most inequitable and unjust and I suggest that individuals who have paid the Employment Tax of Rs. 200 should have a refund from the central finances and this amount of Rs. 200 should be deducted out of the total contribution which is made to that province from the Centre according to the Niemeyer Award. There should be no double taxation on one and the same income and relief must be given to the persons paying the same in the provinces out of the central contribution to the provinces. With these few words, I request this House to accept the Resolution moved by me.

Mr. President (The Honourable Sir Abdur Rahim) : Resolution moved :

"That this Assembly recommends to the Governor General in Council that all persons who may be compelled by a Provincial Government to pay additional tax on their income under the name of employment-tax should be given relief of an equivalent amount in the income-tax payable to the Central Government and the amount so deducted should be written off against the subsidy given under the Niemeyer Award to the provinces out of the revenues derived from the income-tax and railway profits, and that necessary amendment be made in the Income-tax Act."

Mr. F. E. James (Madras : European) : Sir, I should like to put to the Honourable the Finance Member one or two points in connection with this Resolution. I had not realised that it was coming up this afternoon, otherwise we might have given the Honourable Member due notice. But I see that the Resolution prays for relief on the part of persons in the provinces who have to pay additional tax on their income in the name of employment tax ; and with the desire underlying the Resolution I am entirely in sympathy. Coming from a province where we have for many years suffered the imposition of a tax which is erroneously known as a profession tax and which is levied by the local boards under the authority of provincial legislation and is based solely upon income, without any relation whatever to the profession a person might follow, I am entirely sympathetic although I doubt whether it will be practicable or indeed wise from the wider political point of view to agree to this. But what I should like to remind the Honourable the Finance Member of is the general point that was made by my Honourable friend, Mr. Buss, during the budget debates earlier this year as to the urgency of attempting in some way to reconcile the conflicting claims of the provinces and the Centre in regard to the field of taxation. We are all being increasingly taxed in the provinces in various ways and each new tax is raising a problem as to whether in certain respects it does not impinge upon the central field. We have an employment tax in the United Provinces and there are sales taxes in the Madras Presidency and also in Bombay. And there surely should be some attempt on the part of the Provincial Governments and the Centre, if there is room for doubt

as to the legislative lists under the Government of India Act, to come to some agreement. Otherwise, not only is the taxpayer going to be forced to pay on the same income twice, not only is the merchant going to be forced to pay on the same transaction twice, but the taxpayer and the merchant are going to be obliged, owing to this conflict, to go to the expense of fighting these taxes in the courts, and that means a reference to the Federal Court and possibly to the Judicial Committee of the Privy Council, which is bound to be extremely expensive. When Mr. Buss raised this matter last March he urged first of all that there should be a conference, at which this item should appear on the agenda, between the Finance Ministers of the provinces and the Finance Member of the Centre ; and I think he expressed some disappointment that there had not been a second conference during the last cold weather. He went further and suggested that if it were not possible by agreement between the Centre and the provinces to delineate carefully the limits of provincial taxation in regard to the central field, there was a case for an inquiry as to whether some amendment of the legislative lists by Parliament could not be devised which would put the matter beyond the doubt in which it is at present. Those are the points which I should like the Honourable the Finance Member to address himself to when he replies to this Resolution, in addition to the points raised by my Honourable friend, the Mover.

Mr. Muhammad Nauman (Patna and Chota Nagpur *cum* Orissa :
3 P.M. Muhammadan) : Mr. President, the Resolution has

been explained by the Honourable the Mover and does not require any further elucidation so far as the part of the employment tax goes. The reason why this Resolution has been moved from our side is that we feel that the taxation policy of this country should be consolidated or revised either by a conference or by an Act of Parliament or by any other measure which would put a stop to the race which the Congress provinces have begun in the way of piling one tax upon another. It is not only a question of double taxation but sometimes it may be triple and quadruple taxation, the same thing being taxed if it passes from one province to another. My Honourable friend, Mr. James, has just explained to the House that this question is getting serious as the different provinces have already introduced different taxes, named as professions tax and sales tax, etc., over and above the export and import duties which are paid to the Central Government and part of which provinces receive under the Niemeyer Award. The purpose of the Niemeyer Award was as follows as stated in the report :

"It has been recognised that at the inauguration of provincial autonomy each of the provinces should be so equipped as to enjoy a reasonable prospect of maintaining financial equilibrium and in particular that the chronic state of deficit into which some of them had fallen should be brought to an end."

With this idea the Niemeyer Award gave each province such quotas from the Central revenues and such contributions as he thought would adjust their finances. In spite of that what we find is this that they are legislating all sorts of taxes. This Resolution particularly refers to the employment tax which has already been introduced in some provinces and is contemplated to be introduced in other provinces. The position is that a man with an income of about Rs. 6,000 a year from some service pays income-tax to the Central Government on that income and in addition to that he is asked by the province in which he unfortunately resides to pay

[Mr. Muhammad Nauman.]

a further tax under the name of employment tax. It, therefore, amounts to double taxation on that same amount of Rs. 6,000, his yearly earning.

The suggestion which we want to make by this Resolution is this, that in case the Government is not able to make an adjustment of the taxation policy of the whole country, either by summoning a conference or by other means immediately, they should at least give relief to those people who have paid this Provincial employment tax to the extent of the amount that they have paid to the provinces in some form or the other. This is only quite fair and just, because the contribution which the Central Government make to the provinces is out of those taxes which they derive from the residents living in those very provinces, and, therefore, if the provinces are permitted to impose a further tax on the residents inhabiting those provinces, it means double taxation, and, therefore, relief must be given either at the centre or in the provinces. The best method for the present would be this, that until such time as the whole taxation policy of the country is not consolidated either by mutual arrangement or by some other means, the amount which has been paid in one way or other as employment tax in some of the provinces should be refunded by the Central Government, and it should be deducted from the contribution which the Central Government are making to those provinces. To make myself more clear, I would give this illustration : supposing the United Provinces Government levies an employment tax and realises about Rs. 50,000. Then under the award the United Provinces Government receive about Rs. 25 lakhs for five years. What I would suggest is that out of the 25 lakhs, Rs. 50,000 should be deducted and only Rs. 24 lakhs 50 thousand should be paid to those provinces and this fifty thousand should be refunded to those who paid in the United Provinces. That is the concrete suggestion which this Resolution makes, and I hope the Government will consider it seriously. We maintain that the people should not be subjected to double taxation, and relief should be given to them by the Centre in respect of such tax until such time as the whole taxation policy of the country is decided either by conference or by an Act of Parliament or by the Federal Court or by any other means that may be decided upon in future. With these few observations, I take my seat.

The Honourable Sir Jeremy Raisman (Finance Member) : Sir, I must confess that I find myself in considerable difficulty in dealing with this Resolution, and I cannot say that I have derived very much assistance or guidance as to the arguments I have to meet from the speeches which have been made so far. My friend, Mr. James, certainly proposed to me some definite and intelligible questions, but they did not seem to me to arise very directly out of the Resolution which is before the House. I must, therefore, turn to the wording of the Resolution itself and examine what exactly we are being asked to do, and the Resolution falls into two parts. In the first place, I am asked to make such amendments in the Income-tax Act as will enable the payment of an employment tax to be deducted from the assessable income-tax. Well, to confine myself for the moment,—and I shall not enlarge on this point,—to confine myself to that point, I must make it clear that that is a proposition which could not be acceptable to the Government. There is an important principle underlying the treatment of other taxes for purposes of income-tax. Honourable Members will find, if they refer to the Income-tax Act, that certain kinds of taxes are allowed as deductions from the

gains or profits of a business. Under section 10 any sums paid on account of land revenue, local rates or municipal taxes in respect of any premises used for the purposes of the business, profession or vocation are permissible deductions, but these taxes are in the nature either of rent or payment for services rendered. But we allow no deduction, and this is the important principle,—we allow no deduction for payment of a tax which is purely a tax, not even for the payment of the income-tax itself. It may be argued that if a man's income is Rs. 10,000 and we are going to take a thousand rupees off him, then he should be taxed on Rs. 9,000 ; we don't do that. Still less can we accept the principle that if anybody else has put his hands into the tax payer's pocket first, we should deal only with what is left. We claim to come first, or at any rate as early as anybody else in dealing with that matter.

Now, I will leave that point because it is not, I realise, the main object of this Resolution. The main object of this Resolution, as I understand it, is to secure an automatic adjustment which will nullify the attempts of Provincial Governments to levy income-taxes under the guise of employment taxes. The Resolution asks that if and when such taxes are levied, we shall in effect give back the money to the assessee and deduct it from the province when we make the distribution of income-tax which is required by the Order in Council. Well, in the first place, that is not a change which under the Constitution we have any power to make. It would require, in my opinion, not merely an amendment of the Order in Council, but also an amendment of the Government of India Act. But before I come to that aspect of the matter, it seems to me that there is something fundamentally wrong with this Resolution,—and this is the main point, if not the only point,—which I want to put before the House and on the basis of which I would ask the House to negative this motion. An employment tax is either an income-tax or it is not. If an employment tax is genuinely an income-tax which trenches on the Central field of taxes on income, then the constitution provides a remedy. An employment tax, which is in reality a tax on income, is by the Constitution unable to come or remain in existence. We are, therefore, left with employment taxes which are not income-taxes. Now, in regard to such employment taxes, I can see no reason either why any special relief should be given to the assessee or why any adjustment should be made at the expense of the province. It seems to me that that dilemma is complete and entirely removes the basis of this Resolution. You cannot have an employment tax which is genuinely an income-tax continuing in being, even if it comes into being, and therefore, there is no need for an amendment of the Constitution in order to deal with that situation. The Constitution itself provides for it, because by section 100 of the Act, a tax which is both an employment tax and an income-tax is *ultra vires* of a Provincial Legislature.

I refer to section 100. Sub-section (1) says :

" Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the 'Federal Legislative List')."

In sub-section (2) :

" Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, has power to make laws with respect to any of the matters enumerated in List III in the same Schedule. (It is known as the Concurrent List)."

[Sir Jeremy Raisman.]

In sub-section (3) we have :

"Subject to the two preceding subsections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule."

But the important thing is sub-section (1) whereby notwithstanding sub-section (3) the Federal Legislature has, and a Provincial Legislature has not, power to levy an income-tax because taxes on income is one of the items included in List I. However, I do not want to go into a lengthy dissertation on the legal aspect. It seems to me quite clear that the scheme of the Constitution is that income-tax shall be levied by the Centre and not by the provinces and that under whatever guise an income-tax is levied it would be invalid unless it is levied by the Centre. In other words, I claim that the situation with which this Resolution purports to deal is a situation which cannot, in fact, arise.

I will only add a few words since my Honourable friend, Mr. James, did ask me certain questions in relation to the whole subject of overlapping taxation. I have not been able to refresh my memory of the debate which took place last Session on that subject, but I think my predecessor Sir James Grigg indicated that this question would be one for me to deal with. All I can say is that I have taken up the question of a conference with Provincial Finance Ministers and have already addressed them on the subject. But I would like to add that the question of overlapping fiscal jurisdiction is not a question which could easily be treated by a friendly informal conference of Finance Ministers. It is a highly complicated and highly controversial field, and as far as I know, this type of problem has arisen in the case of every federal constitution, and the process of liquidating the various disputes and controversies which have arisen has been, I regret to say,—it is a very discouraging fact—a lengthy one.....

Mr. F. E. James :and an expensive one.

The Honourable Sir Jeremy Raisman :and an expensive one. It has had to be fought out point by point in the courts, and for the very simple reason that no constitution however elaborate can possibly foresee and provide for all those possible disputes. And the function of the courts is to deal with these difficulties. It is not really practicable—human nature being what it is and various other factors coming into the matter—it is not really practicable for a group of Ministers in charge of finance to come together and merely have a gentlemen's agreement as to how these difficulties shall be met. Even if they did temporarily arrive at a settlement, it would obviously not be binding on their successors, and nothing except further elaborations of the constitution could deal with these difficulties, and the process would be an endless one. So that it is inevitable that most of these difficulties should go to the courts. That was by the way and in reply to Mr. James's question. On the main Resolution I can only say that it appears to be unnecessary and for this reason I must oppose it.

Mr. F. E. James : May I ask the Honourable Member a question arising of something that he said, and that is this. In the event of the Central Government being satisfied that a particular tax enacted by a province under the guise of employment tax is, in effect, a genuine income,

tax, I take it that the Central Government will undertake the responsibility of moving the appropriate machinery in order to get the matter settled by the Courts. If the Central Government is satisfied, I take it that the issue will not be left to the private individual to fight it out before the courts.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member is making a second speech.

The Honourable Sir Jeremy Raisman : I am afraid that appears to me to be a hypothetical question with which I can only deal on a concrete situation.

Mr. N. M. Joshi (Nominated Official) : I rise to oppose this Resolution. The Mover of this Resolution pleaded in support of his proposal that no income should be taxed twice. I do not accept that view ; as a matter of fact, that view is not followed by any Government anywhere.

An Honourable Member : It is followed by every Government.

Mr. N. M. Joshi : If my Honourable friends will have the patience—without patience they are not likely to get this Resolution passed. Nowhere in the world, at present, income is taxed only once. The income may be taxed once, may be taxed twice. The same man if he has got only one kind of income will pay income-tax, will pay to the Government of India the customs. Out of what income does he pay all that ?

Mr. Muhammad Nauman : Customs is not a direct tax.

Mr. N. M. Joshi : He never said direct tax, he said no income should be taxed twice. Customs tax is paid out of the same income.

Mr. Muhammad Nauman : Customs is not a tax.

Mr. N. M. Joshi : It is paid out of the income. You have only one kind of income. If a Government servant, unless he takes bribes—his income is fixed. He pays customs duties out of his income. If there are municipal duties he pays them out of that income.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions : Muhammadan Rural) : It is not a tax, it is a sort of duty.

Mr. N. M. Joshi : The tax does not cease to be a tax because it is a sort of duty. I do not think that a tax becomes no tax if it is called a duty or by some other name.

Mr. Muhammad Azhar Ali : It is a sort of cess.

Mr. N. M. Joshi : Call it a cess. If it is called a cess it ceases to be a tax,—that is my Honourable friend's interpretation. I am a practical man. If money is taken from me, whether in the name of a cess or a duty or a tax, it is all the same to me, it is the same thing. In the first place, I feel that Governments in India will find it difficult to carry on their work if we agree to the principle that no income should be taxed twice. The Honourable Member wants the Government of India to give relief to those people who have to pay employment tax, from income-tax. Well, Sir, I do not know whether the Government of India are generous enough. They do not seem to be generous. He makes another recommendation to the Government of India. I do not know whether my Honourable friend was simple enough to believe that the Govern-

[Mr. N. M. Joshi.]

ment of India will turn a law-breaker. The Government of India Act provides that they have to pay the Provincial Government a part of the income-tax. You may pass a Resolution and request them to break the law but I do not think the Government of India will take that risk. I do not know whether any punishment is provided for the Government if they break the Government of India Act. Perhaps not but if the Government of India begin to do that, some punishment will have to be provided. The Honourable the Finance Member while speaking very carefully gave out a hint that the employment tax may be an income-tax. I do not think the employment tax can be an income-tax. The difference is quite clear. The employment tax is a tax on your income from employment. A man may have income from other source which is not counted for employment tax. For income-tax you include both. Therefore, an income-tax is different from an employment tax.

Mr. Muhammad Nauman : Does not an employee pay income-tax?

Mr. N. M. Joshi : You pay income-tax as an employee. You pay taxes for various other things. Mr. James told you that he used to pay a profession tax. It is a kind of tax but not an income-tax. You have to pay tax to the courts in the shape of stamp fees. Therefore, a man may pay taxes for various things. Therefore, it is wrong to say that employment tax is an income-tax. It is quite true that some people have begun to make a grievance that they pay more taxes. Every one grumbles when he is asked to pay taxes. I have to pay more taxes in Bombay. We should remember this, that no Government, Provincial or Central can carry on work without somebody paying for it. If you want the Provincial Governments to do some work in the interests of the people and the masses, then they must find the money and considering the merits of the tax. I think the employment tax is not a bad tax. It falls upon the people according to their ability to bear the burden. I would not, therefore, complain about the employment tax in the United Provinces, if the United Provinces Government is utilising the money properly. I am not one of those people who would complain of taxes, so long as the money is spent on purposes which I approve of. I, therefore, feel that the complaint that the Provincial Governments, especially the Congress Governments, are levying taxes which fall heavily upon some people is not justified. I would not say that the Congress Governments have not made mistakes as regards certain taxes. There are certain taxes which are not good taxes. I am not in favour of the sales tax which the Bombay Government is levying. Property tax is a good tax. I feel, therefore, that although the Congress Governments have made some mistakes as regards their measures of taxation, their taxation policy has not been altogether a bad policy. In any case it is a better policy than that of the Government of India who derive their major portion of the income from indirect taxation. The Government of India have something to learn from the Provincial Government in this respect and change the character of their taxation. They should certainly derive greater income than they are doing today by means of direct taxation. I, therefore, feel that the complaint about the employment tax is not based on reason and, therefore, this Legislature in any case should not

pass this Resolution. My Honourable friend, Mr. James, made the suggestion that the Government of India should come to some agreement with the Provincial Governments. If the Provincial Governments and the Government of India consider proposals in the right way, I have no objection but if the Provincial Governments and the Government of India agree to increase the burden on the poor people, I shall not agree to that. It is quite possible that the Provincial Governments and the Government of India may come to an agreement and say 'let us have more and more of indirect taxation'. It will be wrong on their part to come to such an agreement. It will not be a good agreement. I would, therefore, judge each agreement on its merits. My Honourable friend, Mr. James, also suggested to the Government that they should change the Government of India Act. I do not know whether the Government of India will take that risk. They will be making a mistake if they try to reopen the question of these schedules of taxation. It will not be easy for them again to come to an agreement. They may persuade Parliament to do what the Government of India like but there will be trouble in the country. I would, therefore, suggest that the House should not agree to this Resolution which is bad in every way.

Mr. M. S. Aney (Berar : Non-Muhammadan) : Sir, the Resolution before the House is for two purposes. One is to secure the refund of the amount which the taxpayer will have to pay under a provincial tax such as the Employment Tax. That is one thing. In order to secure their claim for refund, a further suggestion is made that the Government of India need not be afraid of its own revenues in this matter. They have got a remedy and a very easy remedy is suggested, namely, that the contribution that the Government of India have to pay under the Niemeyer Award should be proportionately reduced. I thought that no elected Member of this House, understanding the importance of Provincial Autonomy, would ever come out with a suggestion like that before the House. It is virtually asking the Government of India to bring a kind of pressure upon the Provincial Governments not to exercise the rights which they have got under the Constitution. This is the most objectionable principle that underlies this Resolution. The question is this—whether the Provincial Governments have or have not the right to impose a particular tax. Now, that is a matter on which there is likely to be difference of opinion. The Government of India Act contemplates such a possibility of difference of view and, therefore, they have provided a remedy also to tide over the difficulty. The remedy is quite clear. If the Government of India really think that a particular kind of tax, imposed by a Provincial Government, impinges on their spheres of taxation, they have got a remedy to take the matter to the proper forum and get a decision on that. Instead of asking the Government of India to proceed in that way or allowing the Government of India to make up their mind coolly as to whether the thing is really within the sphere of provincial taxation or within the sphere of the Central Government's powers, my friend says, "why bother with all these things ! You have got certain amount to pay to the Provincial Government, do not pay them, and at the same time recoup the loss which the taxpayers have to bear under that particular taxation by granting them a refund of the amount recovered under the Income-tax Act." Sir, that is not an easy solution. I am sure the Government of India have their own responsibilities and the reply which my Honourable friend, Sir Jeremy Raisman, has just

[Mr. M. S. Aney.]

given has clearly indicated that the Government of India are not going to do anything of the kind at all ; they know their own responsibilities in the matter. Now, I further desire to urge that the ground that the imposition of a particular tax amounts to a double taxation on the same source of income does not appeal to me. I am not a socialist like my friend, Mr. Joshi. In fact I am not a socialist at all, let me first make a clear confession to that effect. I think I am on the right side in disclaiming my association with socialists in the first place but that does not mean that I do not appreciate the good points which they have got.

Because a particular kind of tax amounts to a double taxation on the income of a particular assessee, that ought not to be for that very reason to be considered as unreasonable or unconstitutional. As to whether the employment tax is really an income-tax or not is a constitutional question and a legal issue which will be decided by the proper court. All that we need consider here is whether the taxation that has been imposed under a different name, viz., "employment tax" is of such a nature that it has exceeded the taxing capacity of the assessee or not. If it has not, then there is no reason why this House should take cognizance of that fact. What are the data placed before this House by any one of those who have propounded this proposition so as to convince us or even to give us any reasonable idea as to the taxable capacity of these assessees to pay the employment tax imposed in any particular province ? The only ground on which they have based their claim is that it amounts to a double taxation. That does not appeal to me—it might be a treble tax—for this reason, viz., that a man has got several duties to discharge ; he has to live as a citizen of the State, he has to live as a subject of a particular province, and he has also to live as an inhabitant of a particular locality or of a particular district. Now, in all of these capacities he has to bear his burden for helping the administrations of firstly, the State as a whole, then of the province, then of the city and also of the district or locality which he inhabits and for all of these purposes he will have to make some amount of contribution to the funds out of which these administrations are to be run. If people are not prepared to take that responsibility of giving their proper quota to the funds out of which the administration of a State or of a province or of a district or of a town is to be managed, then they are lacking in the capacity to run or the right to demand the establishment of any representative institution at all. Now, a man's income may be made up of many things out of which "employment" may be only one source of income but whatever amounts of income he has got, out of all that he will have to make all these contributions. He will have to pay some tax to the State, then as a resident of the province he will have to contribute towards provincial funds, and then he will have to contribute something also to local bodies and also to the municipality within whose jurisdiction he carries on his trade or business. These are responsibilities that are inherent in his status as a citizen of a particular State. Therefore, naturally, his income is liable to be taxed in various ways. I leave aside the reference to the indirect tax, but something has to be paid, otherwise how can the administration of that particular town go on ? In my own province there is a profession tax levied under the municipal law there. Therefore, the mere plea that a tax amounts to a double taxation on certain income is not sufficient to warrant this House to come to the conclusion that,

therefore, that tax should be taboo or cease to exist, and in going still further that this Government should bring to bear all its pressure on the Provincial Government by going to the extent of withholding the payment of what is legitimately due from them to the Provincial Government. Of course, if anybody is legally assured of the position that the employment tax is an income-tax, then he might persuade the Government of India to take the case to the proper forum to get a favourable decision thereon. If it is decided there that it is an income-tax, I am sure all assessees will not only be not taxed, hereafter, but whatever they have already paid by way of tax will have to be refunded by the Provincial Governments and the Government of India will not come into the picture at all in the matter of making refunds. But if that is not so, then they cannot bring any kind of pressure to bear upon the Provincial Government. If the powers exercised by the Provincial Governments are properly exercised within the rights given to them by the Government of India, I am sure the Government of India cannot be persuaded by any persons simply by taking the name of "Congress Province"—and this sort of distinction between a Congress Province and a non-Congress Province has no meaning in the discussion of an important issue like this—to bring such pressure to bear upon the Provincial Governments. From the gravity of the issue raised by this Resolution I am sure my Honourable friend will see that it will not be proper for him to press a Resolution like that on the House and to ask the House to record its vote, and he would be better advised to withdraw this motion. We have heard from the Government of India what they have had to say on this point and if there is any legal remedy, the Government of India in its own interest will do it. The Government of India are jealous of any encroachment upon their own source of taxation and if they can see that some encroachment on their own sphere of taxation has been caused, they are sufficiently alert and will take all the necessary steps. You can rely upon their sense of greed and covetousness for lucre and remain content with having expressed what you feel about this matter and then not proceed further. If this suggestion of mine appeals to my Honourable friend, I hope he will withdraw his motion ; otherwise, Sir, I have to oppose the motion.

Sir Muhammad Yamin Khan (Agra Division : Muhammadan Rural) : Sir, I had no intention of speaking on this Resolution but I would like to drive away a misunderstanding which has been created in certain quarters about this Resolution. I can at once tell my friend, Mr. Aney, that this has never been the intention either of the Mover or of the Member who really drafted this Resolution and who is, unfortunately, not present here today. It was never the intention that he would force the Provincial Governments through the Government of India or in any other manner not to exercise their proper functions or rights. I want to clear this point at once that it is neither the intention of the Mover of the Resolution nor of Dr. Sir Ziauddin Ahmad, who really drafted this Resolution, that the Provincial Governments should be coerced in any manner whatsoever. Neither do we think that persons who are living in different spheres have not got their own responsibilities as citizens of India or as citizens of the provinces or as citizens of the towns. We all know that everybody has to shoulder his responsibility in whatsoever sphere he is. But what we do want to bring to the attention of the Government is that in the shape of employment tax, certain people are particularly picked out and they are

[Sir Muhammad Yamin Khan.]

made to pay the double tax. If the same theory had been applicable to all the people who derive their income from one way or the other, then there would have been no grievance. If you say that a man who is in receipt of a salary has to pay besides his income-tax another income-tax but the man who is carrying on the profession of a money-lender has not to pay it, then I do not agree with you. Why should those people who derive their income from money-lending should escape from paying this income-tax and pay only the ordinary income-tax? Does my Honourable friend, Mr. Aney, mean to say that those people are not to share the responsibility which an employee has to take. If the taxation had been brought by the Government of India, it would have meant no discrimination to anybody because everybody having an income up to a certain level would have paid that tax and those people who are going to be hit by that measure would not have had any grievance at all. But the grievance now is that there is a discrimination and only a few persons have been selected to pay a certain kind of tax which the others are not asked to pay who are enjoying the same kind of income or probably much bigger income. That is the only point. I would like to draw the attention of the Government of India to the fact that this is an encroachment on the rights of the Government of India by the Provincial Governments when they are levying a tax under some other name but which is in reality an income-tax and which is to be levied only on a certain class of people. It is to be seen whether it is an encroachment on the rights of the Government of India or not.

Now, the Honourable the Finance Member has said that he is watching the interests of the Government of India.

4 P.M.

That being the case, we have achieved our object.

All that we wanted to bring to the notice of the Government was that there is a kind of injustice which is being done to a certain class of people who should be protected by the Government of India because the tax is being levied in a sphere which is the exclusive sphere of the Government of India and not of the Provincial Governments. If the Honourable the Finance Member says that he is carefully watching this position, then there is nothing more to be said about it. Even if a Resolution had been moved and carried, the Government of India could not stop what has been laid down to be paid by the Niemeyer Award to the Provincial Governments. As has been rightly said by Mr. Aney, if it is an income-tax, it will have to be refunded either now or in the future and with that view we quite agree. But if it is not an income-tax, then even if the Resolution had been passed, the Government of India could not even accept the Resolution. I think the House has succeeded through this Resolution in drawing the attention of the Government and getting their reply as to what they are going to do. There are lots of Government employees who are interested in the matter because they are waiting to see what is going to be their fate and whether this power of taxation is to remain in the hands of the Government of India alone or it will rest with other bodies too. That was our intention and I think we have succeeded in bringing it to the attention of the Government. Like Mr. Aney, I would also request the Honourable the Mover that he may see his way to withdraw the Resolution.

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

**RESOLUTION RE APPOINTMENT OF A COMMITTEE ON THE
"BUNDER BOAT" DISASTER.**

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural) : Sir, I move :

"That this Assembly recommends to the Governor General in Council to appoint a committee of enquiry to investigate into and report on the 'Bunder Boat' disaster in Kiamari harbour, resulting in the loss of five lives of Sind college students, and also to suggest the compensation, if any, that may be awarded to the relatives of the deceased students, consisting of two non-official and one official members of the Central Legislature, and one member of the Sind Assembly and to be presided over by one of the judges of the Judicial Commissioner's Court, Karachi."

This tragic and disastrous collision that took place in the Kiamari harbour is, I hope, known to the House because many questions have hitherto been put in the House with regard to it. Through the echo in this House, this disaster is known all over India. My Resolution makes a simple and a reasonable demand that with regard to this collision it should be made clear how it happened and who were responsible for it and also to find out whether it was the Bunder Boat master and the officers who were responsible for this collision or whether the crews of the boat with which it collided were responsible for it or whether the Port Trust officers were responsible for it. I am also suggesting in the Resolution that compensation should be given to the relatives of the victims who suffered in this tragedy. What are the facts of this tragedy ? On the 25th September, 1938, about 12 college students who had a holiday on that day went on a picnic to an island called Manora. Between Manora and Kiamari they had to cross a creek. They went in the morning and after enjoying their picnic, they returned in the evening at about 8-30 P.M. They had gone by a Bunder boat, which is a country craft. There are many such country boats in the harbour and there are also launches. These Bunder boats have been plying for a long time past in the harbour and they are under the control of the Port Trust. When these students were returning they were not aware that a boat of the British India Steam Navigation Company was due that day. At any rate the boatmen were not informed of the incoming of the steamer. Actually the pilot had gone already to guide the Bunder boat into the creek. This Bunder boat had actually come by a turf into that place and it was not known till then to the boatmen that the boat was likely to come into collision with the steamer. The result was that the Bunder boat struck the Bunder boat. The result was that some students jumped off and others remained in the boat until it went to the bottom. The question is whether any assistance was given to those persons who were being drowned. An enquiry of a particular and peculiar nature was held into this incident. It was ascertained that a tug came to the rescue of those who were in water, so did a launch. All credit is due to them for having come to the assistance of the sinking men. Seven students were actually lifted up and five got drowned. My submission is that the Government ought not to rest content with this partial enquiry but that they should take strong measures, to find out whose fault it was for this tragedy. It would not only be an act of sympathy towards the relatives of the victims but it is also the bounden duty of the Government to find out the real cause and award compensation to the relatives of the victims. After this incident occurred, according to the Indian Merchant Shipping Act, 1923, an enquiry was held on the 31st October, 1938. A formal investigation was made to find out only the incompetency or mis-

[Mr. Lalchand Navalrai.]

conduct of the officers concerned. That enquiry was conducted by the City Magistrate of Karachi, Mr. Agha, who was assisted by two or three assessors. Of course, his terms of reference were restricted only to find out whether there should be any punishment or any censure to be given to these officers. I want to make it clear to the House that that enquiry was more or less of a departmental nature. It was nothing more. I will read out the relevant section. Section 248 says :

"The officer appointed under sub-section (3) of section 246, whether he has made a preliminary enquiry or not, may, and where the Central Government so directs shall, make an application to a Court empowered under section 249 requesting it to make a formal investigation into any shipping casualty ; and the Court shall thereupon make such investigation."

Then, section 249 says :

"Magistrates of the first class specially empowered in this behalf by the Central Government and Presidency Magistrates shall have jurisdiction to make formal investigations into shipping casualties under this Part."

The next section 250 says :

"Any court making a formal investigation into a shipping casualty may inquire into any charge of incompetency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing the shipping casualty."

The power that is given to the Court is laid down in section 257 :

"The court shall, in the case of all investigations under this Part, transmit to the Central Government a full report of the conclusions at which it has arrived, together with the evidence and shall also send a copy thereof to the Provincial Government."

Subsequent section 258 provides :

"Nothing in this Part shall affect the powers conferred by the Merchant Shipping Acts on the Courts conducting investigations under this Part, to cancel or suspend certificates granted under any of the said Acts, or the power to remove the master of a ship conferred by section 472 of the Merchant Shipping Act, 1894."

Then, Sir, the certificate has to be removed. Now, Sir, my Resolution is much more extensive and comprehensive and is intended to show that that inquiry is not sufficient. When a public servant is charged with negligence or incompetency a charge sheet is given to him and on inquiry he is dismissed or something else is done to him. That is not what I want. I want that in regard to this tragedy a full inquiry should be made and it should be found out whether these persons are liable and what should be done to do justice in this case and to avoid and prevent such accidents in future, at the same time what compensation should be given to those who have suffered.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) vacated the Chair which was then occupied by Mr. Aney, one of the Panel of Chairmen.]

Before I state what Government have done in this inquiry or what the Court of Admiralty to which an appeal had been preferred in this case have done, I will read some portions of the report of the City Magis-

trate to show the reasonableness of the demand contained in this Resolution. I will show that the court of inquiry has laid the blame upon the Master of the ship and on the pilot and also some blame on the Port Trust itself. At page 45 it is said :

" This points to the conclusion that the collision directly resulted from the pilot's manœuvre of directing the course of the vessel to starboard, although it is to be remembered that blame is attributable to the boatman for being undermanned and keeping a bad look-out astern which latter fact led to his first bringing himself in the way of the ship in the channel and then having to cross ahead of her and thus contributing to the result."

Further on, they say :

" The order to turn the ship to any one side in the circumstances of the case showed a lack of skill on the part of the pilot."

Again, on page 47, we find :

" The pilot brought the vessel practically right up to the time and place of the collision at full speed."

The rules as given in paragraph 14 on page 47 are :

" Pilots, when bringing in or taking out steamers, should go dead slow when passing the Dredgers or ships at the Bulk Oil Pier wharves or fixed Moorings. In order to avoid risk of collision, they are to keep vessels leaving the port on the Manora or west side of the channel, and vessels coming in on the east side."

With regard to the Port Trust, it is said on page 48 :

" It should be a matter for the Trustees of the Port of Karachi to enforce with greater rigidity their existing rules and instructions and to frame any others regarding speed and the care with which ships should be brought in and taken out, taking into account the fact that bunder boats have to use their channel; as otherwise it would seem that if a boat gets into the channel under adverse circumstances, it will have no chance of getting away with a ship coming at a great speed ", etc.

On page 49, this is what we find in paragraph 18 :

" Five of the twelve students who went on their ill fated excursion on the 25th of September last lost their lives. Seven were picked up by the tug DUGGAN which was behind the ship and by the mooring launch CHENAB which, having come from Manora for the Bandra, stood at the mooring buoy No. 8 and then joined the ship. The tug DUGGAN was the first to come to the rescue and then came the launch. To the Masters of both these vessels, Messrs. Dawood and Emanuel, considerable credit is due for the yeoman service rendered by them in saving life..... I greatly regret that the same cannot be said about the Ship's Officers or the Pilot. And both the above expressions of regret I have voiced and the remark my colleague Mr. Walmsley has made on this aspect of the case ' it is most regrettable that no life buoys were thrown ', etc., is not in my opinion expressing the regret deeply enough. Section 422 of the English Merchant Shipping Act of 1894 imposed on the Master of the Bandra a great responsibility in the matter of rendering assistance to the crew and passengers of the boat consequent upon the collision—a responsibility which Mr. Clark and other officers of the ship, as well as the Pilot, as certificated seamen must be aware of."

So it will be observed that this court of inquiry finds more or less all of them guilty of negligence and of not doing their duty and in an inhuman manner giving no help to these men who were getting drowned. The court also passed a censure on the Master of the ship and an appeal was preferred by the British Indian Steam Navigation Company to the Court of Admiralty in England, and they have maintained that the censure is well deserved. And they said that on account of sheer callousness no step was taken to help these drowning men and no life buoys were thrown to them.

[Mr. Lalchand Navalrai.]

Now, I submit that, so far as the departmental inquiry is concerned, it is all right, but appeals have been submitted to the Government of India by the parents of some of the unfortunate victims asking that justice should be done by awarding them suitable compensation, and I feel that it is the duty of the Government of India to afford them some relief. I find, Sir, that applications have been sent to the Government of India by several of the parents,—and they must all be before the Government of India,—and one of those applications is from Mr. Dingomal, the father of Mr. Mirchandani, one of the college students. I also know that several other parents have made applications asking for compensation or relief. Therefore, the inquiry that has already been made affords us a basis, the cause of action. That the Karachi Court has more or less proved the charges from their own point of view. Now, what I want is that another regular Committee of inquiry should be appointed consisting of two non-official and one official member of the Central Legislature, and one member of the local Legislature, presided over by a judge of the Judicial Commissioner's court at Karachi, because only when this Committee finds out what the exact facts are, it could be said that justice is done to these people. Sir, I submit it is our duty, it is the duty of the Legislature, to pacify the public, by appointing a Committee of the kind that I propose to prove on whom the fault lies for this tragedy. If the Government of India hold that a formal inquiry has already been held and nothing further need be done, that will not be a right step. I have no doubt that the Honourable the Commerce Member will agree that this is a very disastrous tragedy. It is too tragic, and, therefore, I trust that he will do all he can to render such assistance as he can to satisfy the public in this matter. I don't suggest for a moment that the Government of India should at once pass orders to pay compensation, nor do I suggest that what the Court of Inquiry has held should be regarded as gospel truth. No doubt there was an appeal preferred to the Admiralty Court who have also attached some blame to the Captain of the ship, but what I do say is that the Government of India should do something and not tell the parties, the parties in this case,—to seek their remedy in the civil court. In the first place, the public should be told as to how this unfortunate collision took place, who were all responsible for it, and what were the precautions taken by the Port Trust authorities at Karachi, for, Sir, towards the end of this Report of the Court of Inquiry it is stated :

"I may state that I consider it would be a good thing if our Port Trust required the country crafts using the harbour to have a fixed light in the bunder boats in a suitable place from where there would be no possibility of light being obscured by the sail or in any other way not being seen by other vessels using the harbour."

This shows that there are certain rules passed by the Government of India to guide the Port Trust authorities, and it is for the Government of India to see whether in this particular case those rules were actually complied with or not. If a committee of the kind I have suggested is appointed, they will be able to go through these rules and also find out the facts by calling for any necessary evidence and ascertain whether all the instructions and rules given for the safety of the public were complied with by the Port Trust authorities or not. Sir, the safety of the people should not be trifled with, and I am sure the Honourable the Commerce Member will not allow the matter to rest where it is. Now,

it will be pertinent to draw the attention of the Honourable the Commerce Member,—because he was not present in those days,—to the fact that I put a question in this House on the 31st August, 1939, and I asked—"Is it a fact that a reference was made to the Commerce Department that a representative of the Government of India be appointed to represent the Government side in the High Court in England? Have the Government of India appointed any such representative? If not, for what reasons have Government not arranged for such a representation?.....".

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhammadan) : May I know, Sir, is there no time limit?

Mr. Chairman (Mr. M. S. Aney) : The Honourable Member has still two minutes more.

Mr. Lalchand Navalrai : Very well, Sir, I will try to finish within two minutes I have. Now, the reply I got from the Government of India was that the Report of the Committee was still under their consideration, and the fact that the Government of India is still considering that Report shows that they recognise their responsibility in this matter. Of course they will, and it is also entirely in their hands to give suitable compensation to the parents of those unfortunate deceased. Therefore, all that I am now asking is that the Government of India should appoint a Committee of the kind I suggest, because the Report of that Committee will also help them in coming to a proper decision. The Government of India have not yet reached any final conclusion, and the Committee that I propose will merely facilitate the task of the Government of India. I, therefore, hope and trust that my Resolution will be unanimously accepted by this House.

Mr. Chairman (Mr. M. S. Aney) : Resolution moved :

"That this Assembly recommends to the Governor General in Council to appoint a committee of enquiry to investigate into and report on the "Bunder Boat" disaster in Kiamari harbour, resulting in the loss of five lives of Sind college students, and also to suggest the compensation, if any, that may be awarded to the relatives of the deceased students, consisting of two non-official and one official members of the Central Legislature, and one member of the Sind Assembly and to be presided over by one of the judges of the Judicial Commissioner's Court, Karachi."

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour) : Sir, my Honourable friend has drawn attention to a most unfortunate accident that happened some time in September last year. As he has said, a party of 12 college students were out to enjoy themselves in a country boat manned by three boatmen. After they had enjoyed themselves during the whole day they were returning at night at about 8-30 singing songs. They were entering the harbour when suddenly like a veritable bolt from the blue a huge ship came across them and as a result of the collision the little boat sank. Reading these papers, months after the accident, I could not help being touched by the pathos of the whole situation, and if it has not already been conveyed, I should like the sympathy of the Government to be conveyed to the parents and other relatives of the deceased schoolboys for an accident of such an unfortunate and tragic nature.

Mr. Lalchand Navalrai : Thank you.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar :

The Government of India, as soon as they were made aware of this unfortunate accident, took the step which is provided for in the Indian Merchant Shipping Act. They appointed an investigating officer to investigate into the whole accident. The investigating officer made a preliminary investigation and was satisfied that the matter should be further examined. The Government of India thereupon directed under the section which my Honourable friend has quoted, 249, that the City Magistrate of Karachi should make the necessary formal investigations into this casualty. He was assisted, as in these cases he has to be assisted, by three assessors with technical qualifications to judge of the various conditions under which certain navigation rules have to be observed by pilots and shipping masters. I emphasise that aspect because it is an intricate question of navigation laws and technical ways in which a certain ship has to be piloted in certain circumstances, and those who have these technical qualifications and have some knowledge of navigation can alone help a Magistrate in coming to a conclusion. As my Honourable friend has pointed out, the questions were elaborately put to the assessors, twelve in number, by the City Magistrate and their answers have been recorded. Two of these questions and their answers along with the decision of the Magistrate on the subject are relevant to this issue. On the first of these important questions, whether the pilot exercised all due care and whether his directions as regards the navigation of the ship were proper, one of the assessors and the Magistrate held that the pilot had not exercised proper discretion and that the order he gave in the technical terms was incorrect. The other two assessors were of the opposite opinion. On the second question, whether the Master of the ship did all that was required of him under the British Merchant Shipping Act in giving help to the students who were thrown off their balance and fell into water when the boat capsized, practically all the assessors were of the opinion that the master had not exercised that function which it was his duty to exercise, that he did not throw lifebelts into the water, that some of the boys could have been saved, as indeed the other boys were saved, if immediately after this collision occurred lifebelts had been thrown into the water, and the Magistrate censured the Master of the ship for his gross negligence in not doing this obvious duty. This report came up to the Government for consideration. I may observe that if the Magistrate had come to the conclusion that there was what was called criminal negligence by doing a rash and negligent act it was competent on his part under another section of the Indian Merchant Shipping Act, section 256, to direct that the party should take his trial before a criminal court. That section reads :

" Whenever, in the course of any such investigation, it appears that any person has committed within the jurisdiction of any Court in British India an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court."

I have to point out that, in the course of the judgment, the City Magistrate, though he came to the conclusion that the pilot did not act rightly, did not come to the conclusion that he did anything rash or negligent to justify a criminal prosecution, and, therefore, he did not act under section 256 and commit him for trial before a proper Court. As regards

the master of the ship himself, though it was an unfortunate thing that he did act against all the best traditions of the mercantile marine service of the world and of Great Britain in particular, there was nothing with which he could be charged in a criminal court. It is perfectly true that on this report of the Magistrate, fortified at least by the opinion of one assessor, the Government of India were called upon to examine the question. What form that examination would have taken I am not in a position at present to state. But I may say this that it would not have taken the form which my Honourable friend invites the Government to take in this Resolution, namely, the form of granting compensation to the parties concerned. The question would have been one of disciplinary action against the pilot for such a negligence. But whatever it may be, the whole question has taken a different turn on account of the fact that an appeal was presented to the Court of Admiralty in England, under the provisions of the British Merchant Shipping Act, by the pilot and by the master of the ship. In that appeal the Government of India were not represented, and in answer to questions of my Honourable friend I explained why the Government of India were not represented on that occasion. The Board of Trade in England which looks after mercantile marine affairs, just as the Commerce Department of the Government of India is charged with such matters in this country, took upon itself the duty of having a legal representative to argue the technical points involved in navigation law before the Court of Admiralty, and as there was nothing further that the Government of India could have done in this matter, the Government of India were content to have that representative put forward the case as we understood it with reference to the navigation laws. The result of that decision is now before us. The High Court of Admiralty in England completely exonerated the pilot of the ship and said that the course that he followed was the course which anybody under those circumstances would reasonably have been expected to follow, and, therefore, the charge which the Magistrate made, albeit in a very modified form, of negligence to some extent was not sustainable. We have, therefore, the judgment of one of the highest courts that the pilot of the ship was not responsible for the accident. I may explain in passing that there was no question at any stage that the country boat itself and those who were responsible for the country boat were not in a great measure responsible for this accident. They had not the necessary staff on the board, they did not have lifebelts which they ought to have on that boat, they did not have light in the proper position, they cut across the course of the ship in violation of the orders that had been issued by the Port Trust authorities in such matters, and there could be no question at all that there was contributory negligence in every sense of the word so far as the country boat was concerned. The judgment of the High Court of Admiralty is interesting in another respect. I referred to its finding and to the fact that it vindicated the pilot of the ship, but so far as the master of the ship was concerned, the judgment of the High Court of Admiralty endorsed and confirmed in every way the judgment of the City Magistrate. The High Court held that the master of the ship must have thrown life belts into the water to save these unfortunate victims, that he did act contrary to the best traditions of the mercantile marine service in England, and, therefore, they confirmed the censure which has been passed by the City Magistrate on the master of the ship. That censure does not, however, involve a cancella-

[Diwan Bahadur Sir A. Ramaswami Mudaliar.]

tion of the certificate that he now holds as a master mariner. But to a man who has spent his life in shipping, who has a reputation to sustain, who has got a name to maintain, I understand that in the mercantile marine service that censure will be looked upon as a great blot.

Now, I come to the Resolution which my Honourable friend has moved. It is under those circumstances, in the light of these facts, that my Honourable friend still wants the Government of India to appoint a committee to investigate into these matters and to come to certain conclusions. How is it possible for me, with the greatest sympathy that I have shown and I do feel for the victims of this accident, to accept this Resolution ?

Mr. Lalchand Navalrai : That will be only lip sympathy.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : What does my Honourable friend want ? He says :

"This Assembly recommends to the Governor General in Council to appoint a committee of enquiry to investigate into and report on the 'Bunder Boat' disaster in Kiamari harbour,——."

Apart from the personnel of the committee that he has suggested, I am asked to accept this Resolution and to appoint a committee to investigate into facts on which there has been a detailed formal investigation by a City Magistrate on the spot, assisted by assessors with technical qualifications on which an appeal has been filed to the highest court, the High Court of Admiralty, with technical and efficient knowledge of the whole subject. They have already given a decision.

Mr. Lalchand Navalrai : There was only one particular point that they had to decide. I am asking for another point to be decided. We are not bound by that at all.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : This committee is now to sit in judgment on the finding of the City Magistrate and in fact on the findings of the High Court of Admiralty of England itself and what is this Committee ? With all respect to this House, I was once a Member of this House on the other side, as my good friends have reminded me this morning, I cannot commend and I could not have, even if I had sat on that side of the House, commended the proposition to the acceptance of this House. There are to be two non-official Members of this House. The Member from the Sind Assembly would perhaps have been better qualified than any Member of this House.

Mr. Lalchand Navalrai : They are on the spot there. They can throw more light on the question.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : It is to be presided over by one of the Judges of the Judicial Commissioner's Court.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

They have to examine this whole question which is of a highly technical nature—the duties of a pilot under certain circumstances, the order that he should have given, whether he should say "Hard to starboard and full astern" or something else. These are the questions on

which this committee is going to investigate. They are questions which, as I have shown, have been investigated both by the City Magistrate and the High Court of Admiralty. Secondly, there was a section of the Act under which the City Magistrate investigated in this case. He had all the powers conferred on him by the Code of Criminal Procedure and the Evidence Act. What are the powers which this Committee is going to be invested with and by whom are these powers going to be invested on this committee for securing evidence, the calling of witnesses and asking for their statement on oath or affirmation ? How is this committee going to investigate into a matter which may form still the subject of a criminal trial and certainly of civil proceedings ? How is this committee going to get evidence and adjudicate on a matter of this nature on which, as I have already said, there has been adjudication by more than one tribunal ?

Mr. Lalchand Navalrai : Under the authority of the Governor General.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : I do not know what the authority of the Governor General is in these matters but I can certainly say that the Government of India have very little authority to confer such powers on a committee of this nature. Then, Sir, of what value will the findings of this committee be ? My Honourable friend suggests that compensation may be given. By whom ? Are the findings of this committee going to bind any one at all ?

Mr. Lalchand Navalrai : The Government of India can give that compensation.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : I am glad that my Honourable friend has interjected that statement. If the Government of India has to give this compensation, there is no necessity for an inquiry, for any committee, for any investigation. These poor unfortunate students are dead. Their parents are suffering. Then why not straightforwardly give compensation if it is within the powers of the House or the Government of India to give that compensation ? I understood that this committee was to decide who should pay this compensation, that is to say, the British India Steam Navigation Co., whose steamer collided with this country boat or the pilot or the Karachi Port Trust authorities, who were the parties involved in this matter. Surely, the Government of India were not contributaries to this accident and, therefore, I can find no reason at all for accepting the proposition such as my friend has moved. Under these circumstances, I regret very much, while expressing the greatest sympathy with the victims concerned and the parents and relatives of the victims, that I cannot see my way to accepting this Resolution.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

" That this Assembly recommends to the Governor General in Council to appoint a committee of enquiry to investigate into and report on the ' Bunder Boat ' disaster in Kiamari harbour, resulting in the loss of five lives of Sind college students, and also to suggest the compensation, if any, that may be awarded to the relatives of the deceased students, consisting of two non-official and one official members of the Central Legislature, and one member of the Sind Assembly and to be presided over by one of the judges of the Judicial Commissioner's Court, Karachi."

The motion was negatived.

THE COMMERCIAL DOCUMENTS EVIDENCE BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Mr. J. A. Thorne (Home Member) : Sir, I present the Report of the Select Committee on the Bill to amend the Law of Evidence with respect to certain commercial documents.

The Assembly then adjourned till Eleven of the Clock on Monday, the 4th September, 1939.