

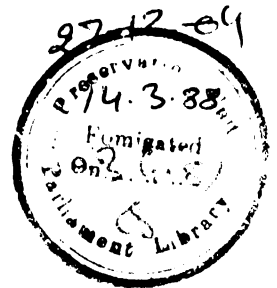
Monday, 17th March, 1941

THE COUNCIL OF STATE DEBATES

VOLUME I, 1941

(19th February to 4th April, 1941)

NINTH SESSION OF THE FOURTH COUNCIL OF STATE, 1941



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COUNCIL OF STATE.

Monday, 17th March, 1941.

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

QUESTIONS AND ANSWERS.

QUARTERS FOR INFERIOR STAFF OF GOVERNMENT DEPARTMENTS, ETC.

94. THE HONOURABLE MR. HOSSAIN IMAM : (a) Are daftaris, peons and jemadars working in the Departments of the Government of India, etc., turned out of Government quarters to make way for the subordinate employees of the Departments of Government recently created ?

(b) Is no lien kept for quarters of the inferior staff of the Government of India Secretariat and its subordinate offices ?

(c) Is the allotment of these quarters made under any rule or system ? If not, why not ?

THE HONOURABLE MR. H. C. PRIOR : (a) No.

(b) and (c). Under the existing system quarters for the inferior staff are placed at the disposal of the Departments or offices on a *pro rata* basis and are allotted by them to individuals. As far as possible, liens are not disturbed and the same quarters are in the usual course allotted to the Departments, etc., every year. Departments allot these quarters equitably and have full power to preserve or break liens.

THE HONOURABLE MR. HOSSAIN IMAM : Is it a fact that some quarters have been taken away from the Legislative Department ?

THE HONOURABLE MR. H. C. PRIOR : I must ask for notice of that question, Sir.

QUARTERS FOR INFERIOR STAFF OF THE CENTRAL PUBLIC WORKS DEPARTMENT.

95. THE HONOURABLE MR. HOSSAIN IMAM : (a) Will Government state how many daftaris, peons and jemadars are employed in all the offices under the Central Public Works Department ?

(b) Has all the inferior staff of the Central Public Works Department been provided with quarters ?

(c) Is an employee of the Central Public Works Department allotted a quarter immediately he joins the office ? Are most of the inferior staff of other Departments who have put in 15 to 20 years' service not provided with any quarters ?

(d) Are the employees of the Central Public Works Department like electrical mechanics, carpenters, drivers of municipal lorries, etc., allotted quarters which are meant for daftaris and peons of all the Departments of the Government of India and attached offices ? If so, why ?

THE HONOURABLE MR. H. C. PRIOR : The information is being collected and will be laid on the table of the House in due course.

MOTOR VEHICLES ACT, 1939.

96. THE HONOURABLE MR. N. K. DAS: (a) Have Government collected from the provinces any information regarding the working of the different new sections of the Motor Vehicles Act of 1939?

(b) If not, do Government propose to do so at an early date?

THE HONOURABLE MR. S. N. ROY: (a) and (b). The reply to both parts is in the negative.

COMPANY-MANAGED RAILWAYS.

97. THE HONOURABLE MR. N. K. DAS: Will Government state—

(a) What extent of control they exercise over Company-managed Railways?

(b) Whether it is within their contemplation to acquire the B. N. R. as soon as the period of guarantee is over?

(c) If so, when do they propose to acquire it?

(d) If not, what are the difficulties in their way and when will the period of guarantee come to an end?

THE HONOURABLE MR. L. WILSON: (a) The extent of the control exercised by the Government of India over Company-managed railways by virtue of the provisions of the Indian Railways Act, 1890 and the subsisting contracts with the Companies, is stated in Appendix "B" of the Report by the Railway Board on Indian Railways for 1938-39, Volume I, to which the attention of the Honourable Member is invited. A copy of this Report is in the Library of the House.

(b), (c) and (d). The earliest date on which "the contract of the B. N. R. can be determined" is 31st December, 1950. It is yet too early to consider the question.

EMPLOYMENT OF ORIYAS ON THE B. N. R.

98. THE HONOURABLE MR. N. K. DAS: (a) Are Government aware that the management of the B. N. R. have taken no steps to employ Oriyas in the upper grades of the services in that Railway?

(b) Are Government aware that the foodstuffs offered for sale at wayside stations, on the B. N. R. main line between Howrah and Madras, by licensed hawkers are sometimes unhygienic and bad and that no control or inspection is exercised over such foodstuffs?

(c) Do Government propose to take steps to move the B. N. R. authorities to remedy these grievances forthwith?

THE HONOURABLE MR. L. WILSON: (a) and (b). No.

(c) As regards the employment of Oriyas, recruitment is not made on a territorial basis and Government, therefore, contemplate no action. As regards the supply of foodstuffs, I am sending a copy of the question to the Agent and General Manager for such action as he may consider necessary.

INDIAN CIVIL SERVICE OFFICERS WHO HAVE RETIRED ON PROPORTIONATE PENSION, ETC., FROM THE 1ST APRIL, 1937.

99. THE HONOURABLE MR. HOSSAIN IMAM: Will Government give the following information about I. C. S. officers:—

(a) The name, nationality and years of service of the officers who have retired on proportionate pension from 1st April, 1937 to 31st December, 1940.

(b) The names of those who have resigned in the same period.

(c) The names of officers who have been dismissed or discharged, or suspended from service in the same period, with reasons for this action?

THE HONOURABLE MR. E. CONRAN-SMITH: I lay on the table three statements giving the required information.

3

Statement showing the names, nationality and years of service of I.C.S. officers who retired on proportionate pension during the period 1st April, 1937 to 31st December, 1940.

Serial No.	Name.	Nationality.	Years of (entry into) service.
1	2	3	4
1	R. B. MacEven	European	1922
2	G. U. Whitehead	Do.	1927
3	W. Dillon	Do.	1920
4	P. J. Griffith	Do.	1922
5	T. A. Freston	Do.	1922
6	S. K. Sinha	Indian	1919
7	C. K. Seaman	European	1913
8	A. G. Blake	Do.	1920
9	G. G. Hooper	Do.	1921
10	F. H. Logan	Do.	1928
11	S. P. H. Cadman	Do.	1930
12	J. M. Stapylton	Do.	1928
13	L. V. Ardagh	Do.	1920
14	M. J. Carritt	Do.	1930
15	J. B. Kindersely	Do.	1919
16	J. B. L. Munro	Do.	1928
17	W. G. Bradford	Do.	1915
18	R. H. Parker	Do.	1922
19	A. Wittaker	Do.	1924
20	James Read	Do.	1923
21	W. B. Gilligan	Do.	1922
22	D. J. N. Lee	Do.	1919
23	L. G. Durno	Do.	1921

II

Statement showing the names of I.C.S. officers who resigned from the Service during the 1st April, 1937 to 31st December, 1940.

Serial No.	Name.
1	H. V. Kamath.
2	T. J. H. Hetherington.

III

Statement showing the names of I.C.S. officers who were dismissed, removed or suspended from the Service during the period 1st April, 1937 to 31st December, 1940 with reasons for the action taken in each case.

Serial No.	Name.	Whether dismissed, removed or suspended.*	Reasons for the action taken.†
1	I. M. Kidwai	Removed.	
2	S. S. Bajpai	Do.	
3	I. M. Lall	Do.	

*Government of India have no information about orders of suspension, if any, passed by Provincial Governments or Chief Commissioners under their own powers. No such orders was passed by the Government of India on any officer serving under it.

† Government do not consider that it is in the public interest to give this information.

PROVINCIAL ADVISORY COMMITTEE FOR WAR SUPPLIES.

100. THE HONOURABLE MR. HOSSAIN IMAM : Will Government lay on the table a reply to my supplementary question to question No. 37 of the 27th February, 1941, on the subject of the representation of Bihar on the Provincial Advisory Committee for War Supplies for Bengal ?

THE HONOURABLE MR. A. DEC. WILLIAMS : I lay the answer on the table.

The Director of Industries to the Government of Bihar is the representative of Bihar on the Bengal Committee.

VALUE OF EQUIPMENT TO BE PROVIDED BY HIS MAJESTY'S GOVERNMENT.

101. THE HONOURABLE MR. HOSSAIN IMAM : With reference to paragraph 20 of the Finance Member's Budget speech, will Government state the monetary value of His Majesty's Government's contribution for equipment ?

THE HONOURABLE MR. C. E. JONES : One of the advantages of the settlement with His Majesty's Government is that specific accounts need not be kept of the free issues of equipment from the United Kingdom. A very rough estimate of the equipment which His Majesty's Government will provide for our present programmes is some Rs. 40 crores.

THE HONOURABLE MR. J. H. S. RICHARDSON : Can Government give any information of the value of the supplies and services rendered to and paid for by His Majesty's Government also referred to in paragraph 20 of the Budget speech ?

THE HONOURABLE MR. C. E. JONES : In the current year a very rough estimate is Rs. 43½ crores. For the coming year 1941-42 the figure we have in mind at the moment is about Rs. 91 crores.

BRIGADIER C. S. TUTE.

102. THE HONOURABLE MR. HOSSAIN IMAM : Will Government state the name, qualifications and pay of the officer appointed to represent India in America for purchases ? When was he appointed, how was the selection made and what was his former pay ?

THE HONOURABLE MR. A. DEC. WILLIAMS : Brigadier C. S. Tute, I.A. (Retired). He was appointed by the Secretary of State in June, 1940 and draws the pay of an Ordnance Officer, 1st Class, at the British rate, namely, £2-14-4 a day, *plus* the normal allowances of such an officer and subsistence allowance while he is in America or Canada. In addition, he is allowed 25 per cent. of his pay in lieu of his pension which is held in abeyance. Before retirement from India, Brigadier Tute was Director of Ordnance Factories at Army Headquarters. His salary in that post was Rs. 2,500 per mensem.

THE HONOURABLE MR. HOSSAIN IMAM : Can the Honourable Member give any idea of the things that he has bought, the value of those things ?

THE HONOURABLE MR. A. DEC. WILLIAMS : I do not see that that arises out of this question, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Were the Government of India asked to nominate an officer before the Secretary of State nominated him ?

THE HONOURABLE MR. A. DEC. WILLIAMS : The appointment was made after consultation, Sir.

INDIAN STERLING LOANS.

103. THE HONOURABLE MR. HOSSAIN IMAM : Will Government give the following information about Indian Sterling Loans on or about 31-1-41 :—

(a) The amount of each kind of loan outstanding excluding purchase by the Reserve Bank ?

(b) The price of each on London Stock Exchange ?

(c) The amount and kinds of non-terminable loans purchased by the Reserve Bank and the average prices paid in 1939-40, and ten months of 1940-41 ?

(d) The prices fixed by His Majesty's Government for purchase by India ?

THE HONOURABLE MR. C. E. JONES : (a) I place a statement on the table containing the required information.

(b) The prices of securities fluctuate from day to day and will be found in the leading financial papers both in India and the United Kingdom.

(c) Purchases were made on different dates and Government do not consider that any useful purpose will be served by collecting this information.

(d) The prices are the sterling equivalents of the rupee rates contained in Notification No. D. 926-B/41, dated the 8th February, 1941, of the Government of India whereby such securities owned by residents in India were transferred to the Central Government.

THE HONOURABLE MR. HOSSAIN IMAM : Will the Honourable Member lay that information on the table ?

THE HONOURABLE MR. C. E. JONES : The notification has been published in the Gazette of India and is in the Library of the House.

THE HONOURABLE MR. HOSSAIN IMAM : Of what date ?

THE HONOURABLE MR. C. E. JONES : Dated the 8th February, 1941, Gazette of India Extraordinary.

Description of loan.	Balance outstanding on 31st January, 1941.
2½ per cent. 1926	11,046,486
3 per cent. 1948	70,746,685
3½ per cent. 1931	78,820,384
3 per cent. 1949-52	8,427,500
3½ per cent. 1954-59	9,445,000
4 per cent. 1948-53	9,945,000
4½ per cent. 1950-55	36,175,390
4½ per cent. 1958-68	16,060,000
5 per cent. 1942-47	5,429,614

WAR PURPOSES FUNDS.

104. THE HONOURABLE MR. HOSSAIN IMAM : Will Government state the total amount collected in each province for war purposes up to 31st January, 1941, and the amounts sent to His Majesty's Government and the sums set apart for Indian defence ?

THE HONOURABLE MR. C. E. JONES : The information regarding the various funds for war purposes opened in each province is not readily available but, as regards His Excellency the Viceroy's War Purposes Fund, which includes subscriptions from all parts of India, I can inform my Honourable friend that, up to the 28th of February, 1941, out of a total of Rs. 3,28,75,218, the amount sent to His Majesty's Government was Rs. 1,25,70,878, and that set apart for Indian Defence purposes was Rs. 81,04,320, the greater part of which represents recurring contributions. These payments were all made in accordance with the wishes of the donors and do not include payments for relief and charitable purposes.

ALLOCATION OF EXPENDITURE ON MUNITION PRODUCTION.

105. THE HONOURABLE MR. HOSSAIN IMAM : Will Government state how they propose to apportion between His Majesty's Government and the Government of India the Rs. 7 crores scheme of expansion of munition production ? If not, why ?

THE HONOURABLE MR. C. E. JONES : The entire capital expenditure on munition production is borne by His Majesty's Government.

RURAL DEVELOPMENT FUND.

106. THE HONOURABLE MR. HOSSAIN IMAM : Will Government give the following information about the Rural Development Fund :—

(a) The amount paid up to date and proposed to be given in the next financial year to each province.

(b) The basis on which the distribution is made ?

THE HONOURABLE MR. C. E. JONES : (a) I would invite the Honourable Member's attention to the statement which I laid on the table of the House in reply to his question No. 65 on the 5th instant. An allotment of Rs. 38,516 has since been made to the Government of the Central Provinces and Berar. Further payments next year will be made as and when required by the provinces according to the progress of their schemes.

(b) The grant was distributed mainly on the basis of rural population.

SURPLUS SILVER HELD BY GOVERNMENT.

107. THE HONOURABLE MR. HOSSAIN IMAM : Will Government state the number of silver rupees of old and new mintage held by Government in the Silver Rupee account and the amount sold from the inception up to 31st December, 1940 ?

THE HONOURABLE MR. C. E. JONES : Information regarding the surplus silver stock of the Government of India which is presumably what the Honourable Member desires to have is given in the annual Appropriation Accounts of the Central Government copies of which are in the Library of the House. The information is compiled so as to show the position at the end of each financial year and not at the end of a calendar year. The last published accounts are for 1938-39, but the accounts for the next year are expected to be published shortly.

MESSAGE SENT BY THE GOVERNOR OF CEYLON TO THE STATE COUNCIL.

108. THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Will Government place on the table a copy of the message sent by the Governor of Ceylon to the State Council regarding the matters in respect of which undertakings have been given by His Majesty's Government and the Government of Ceylon to the Government of India ?

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI : A copy of the message is laid on the table of the House.

Message from the Governor to the State Council of Ceylon.

UNDERTAKINGS GIVEN TO THE GOVERNMENT OF INDIA.

1. In connection with the recent Informal Conference at Delhi between a Ministerial Mission from Ceylon and representatives of the Government of India it is desirable to place on contemporary record in the easily accessible form of a Message to State Council a Schedule of certain matters in respect of which undertakings have been given by His Majesty's Government and by the Government of Ceylon to the Government of India, together with references to the latest statements made in relation to such undertakings.

2. Having regard to the circumstances in which these undertakings were given the Government of Ceylon is bound by them to the Government of India and I hold myself bound as Governor to withhold approval, ratification or assent in respect of any act, regulation or measure to which the Government of India has not agreed and of which the effect would be to deprive Indians of the benefit of any of the undertakings.

3. The subject of State Franchise and Statements in regard to it are not included in the Schedule, because it is a matter governed by Order of His Majesty in Council and not by local regulation or ordinance requiring my approval, ratification or assent.

Schedule.

Subject matter.	Statements.
Restrictions on immigration of Indians	<p>Paragraph 2 of a Memorandum sent by the Governor of Ceylon to the Viceroy and Governor General of India on the 22nd August, 1921.</p> <p>" 2. Any restrictions by means of Passport Regulations or by law on the immigration of other* classes of Indians, e.g., traders, tourists, professional gentlemen, etc. :—</p> <p>..... There are no restrictions on the immigration of the classes mentioned or of any Indians as such. There are legal restrictions on the immigration of destitutes, vicious persons and stowaways irrespective of nationality."</p>
Municipal Franchise	<p>Paragraph 16 of a letter dated the 27th July, 1922, from the Colonial Secretary, Ceylon, to the Secretary to the Government of India, Department of Revenue and Agriculture (Emigration).</p> <p>" as regards the Municipal Franchise members of the resident Indian Community enjoy equally all the privileges of the indigenous population and they are entitled, if elected, to hold seats on local municipal bodies."</p>
Free repatriation in cases of sickness or of unemployment due to industrial depression	<p>Paragraph 4 of a letter dated 28th October, 1922, from the Colonial Secretary, Ceylon, to the Secretary to the Government of India, Department of Revenue and Agriculture (Emigration) in reply to a request for an additional guarantee that Indian labourers would be free to return if unable to maintain themselves in times of industrial depression.</p> <p>" I am to state that this Government is ready to make provision to meet the cost of returning emigrants to India in the case of (a) sick men and (b) men thrown out of employment owing to retrenchment in times of industrial depression."</p>
Legal rights	<p>Paragraph 25 of Information Relating to Ceylon for publication under Rule 17 of the Indian Emigration Rules sent to the Government of India for approval on 4th April, 1929.</p> <p>" LEGAL AND SOCIAL POSITION.</p> <p>25. Indians in Ceylon have the same legal rights as members of the local population and they can acquire and hold land."</p> <p>NOTE—The Statement of Information was approved by the Government of India on the 1st July, 1930, and a copy (with Tamil or Telegu translation) has since been furnished to every assisted immigrant before leaving India.</p>

(*) i.e., other than recruited Indian labourers.

Subject matter.	Statements.
No intention of altering Ceylon Law to detriment of Indians	<p>Passage from the Secretary of State's telegram No. 50 of the 10th June, 1930, published in Ceylon as Sessional Paper No. XVI of 1930.</p> <p>" His Majesty's Government wishes to make it clear that there is no intention of repealing or amending to the detriment of Indians any of the laws of Ceylon affecting their position or privileges."</p>

GOVERNOR.

USE OF RAILWAY SALOONS BY OFFICERS OF THE SUPPLY DEPARTMENT.

109 THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Are there any officers of the Supply Department who are allowed to travel in saloons ? If so, who are the officers concerned, and why have they been allowed this privilege ? Do Secretaries or Additional Secretaries in other departments also travel in saloons ?

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir Guthrie Russell, Director General, Munitions Production, is entitled to use an inspection carriage while travelling in connection with duties directly connected with the Directorate General, Munitions Production. This concession has been allowed to Sir Guthrie Russell, as immediately before his appointment to the Supply Department, he was Chief Commissioner for Railways in which capacity a saloon was provided for his exclusive use. No other officer in the Supply Department is entitled to the use of a saloon : so the last part of the question does not arise.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Has the concession in the case of Sir Guthrie Russell been made indefinitely or is it for a limited period ?

THE HONOURABLE MR. A. DEC. WILLIAMS : I imagine, Sir, that as it is personal to him, so long as he goes on, the concession will go on.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : What is his rank ? Is it that of a Secretary or Additional Secretary ?

THE HONOURABLE MR. A. DEC. WILLIAMS : He has been appointed *ex-officio* Additional Secretary.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Is there any other Additional Secretary or Secretary who has been given the same privilege ?

THE HONOURABLE MR. A. DEC. WILLIAMS : No, Sir, except that the Secretaries in the External Affairs and Political Departments are entitled to the use of the saloon.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Did the Honourable Member say that the Secretary and Additional Secretary in the External Affairs Department were allowed the same privilege ?

THE HONOURABLE MR. A. DEC. WILLIAMS : There is no Additional Secretary in the External Affairs Department.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Since when has the Secretary in the External Affairs Department been allowed this privilege ?

THE HONOURABLE MR. A. DEC. WILLIAMS : Very nearly since the memory of man, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Has it been there since the Honourable Member entered service ?

THE HONOURABLE MR. A. DEC. WILLIAMS : Which Honourable Member does he mean, Sir ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Himself.

THE HONOURABLE MR. A. DEC. WILLIAMS : I must have notice of that question, Sir.

**RESOLUTION *RE* ALLOCATION OF DEFENCE EXPENDITURE
BETWEEN HIS MAJESTY'S GOVERNMENT AND INDIA.**

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Mr. President, I rise to move :—

"That this Council recommends to the Governor General in Council to form a Committee of Members of the Indian Legislature (i) to scrutinize and approve of the apportionment of defence expenses between the Government of India and His Majesty's Government and (ii) to submit a report on the past transactions."

May I add the words "since the war", Sir ?

THE HONOURABLE THE PRESIDENT : Where do you want to add them ?

THE HONOURABLE MR. HOSSAIN IMAM : At the end of the Resolution because it is not clear.

THE HONOURABLE THE PRESIDENT : I will allow you.

THE HONOURABLE MR. HOSSAIN IMAM : This Resolution, Mr. President, is really a very modest demand. It does not encroach upon the military preserves and I have been careful not to infringe the constitutional position of the present Government of India. No doubt it can rightly be called an innovation, a new thing, but we are face to face with a thing which has no precedent in the past. His Majesty's Government, as the Finance Member has put it, has generously come forward and agreed to share part of the cost of the defence equipment and training of those who go over to other places outside India. The question that this is a new thing cannot be urged against this merely because of newness, as the condition is also new, and therefore we could not have any precedent or anything to guide us in the past. Sir, every inquiry that we had made on this head before today had failed to elicit any information from the Honourable the Finance Secretary and it is only today in reply to the supplementary question of my Honourable friend Mr. Richardson that he gave out figures which were hidden so long. I think the Finance Department ought to take lessons in propaganda value from their American friends. Nevertheless, Sir, there are questions still involved which require elucidation and it would not be at all harmful to the interests of India or to the prosecution of the war if a little more light were to be thrown on the question. Just as today's question has elicited good information, similarly if this Committee is

formed, much of the distrust and a great deal of the misgiving that exist in the public mind would be removed. Because you are doing work satisfactorily, i.e., to your own satisfaction, it is no reason why others should also be satisfied with your good work. It is well-known that good government is no substitute for self-government. Also we have to consider the fact that at the Round Table Conference it was declared by His Majesty's Government that Defence will be increasingly the concern of Indians, but we find that the progress has been in the reverse direction. When I say reverse direction I mean that in military matters and in matters of Defence formerly we used to have information. We had no control but we had detailed information. Now we are denied even that. I do understand the correctness of this procedure in view of the war. You may not publicly declare all that you are doing for the defence of India, but is there any reason why Indians should not be associated? Right at the beginning of the war His Excellency the Viceroy had announced that he would have a Defence Advisory Council of 20 persons. It is still there in suspension. If there were anything intrinsically wrong in giving information to Indians, I take it that His Excellency the Viceroy would not have made that announcement.

THE HONOURABLE THE PRESIDENT : Are you criticizing the Viceroy's action in not appointing a Defence Council?

THE HONOURABLE MR. HOSSAIN IMAM : No, Sir. I am saying that there is no technical objection to associating Indians and in proof of that I cite His Excellency's announcement.

THE HONOURABLE THE PRESIDENT : That may be.

THE HONOURABLE MR. HOSSAIN IMAM : I approve of the announcement and I bring it forward to show that there is nothing intrinsically wrong in asking that Indians should be associated with Defence matters. I gave as my precedent the announcement of the Viceroy. It is only in passing that I remarked that the thing had so far been inoperative.

Sir, at the present moment, Indians of every shade of opinion, of every political school, are united at least in one demand : that greater association of Indians in Defence matters is necessary. Even the Moderates of Bombay, Sir, when they assembled together put forward the demand that the Defence portfolio should be transferred to Indians. My demand, Sir, does not go so far. I only want a committee for a specific purpose. That purpose is to decide what should be the rules and regulations and the *modus operandi* for the apportionment of the expenses between His Majesty's Government and the Government of India. The Bombay Resolution, Sir, may not be approved by many—and I am one of them—but that is not the point at issue. The fact that three ex-Members of the Viceroy's Executive Council have blessed this proposal that Defence matters should see the light of day and Indians should be associated with it, is my argument in favour of the Finance Department taking us into their confidence.

THE HONOURABLE THE PRESIDENT : You may give that as your view. I am not going to attach any importance to the views of the three ex-Members of the Viceroy's Executive Council.

THE HONOURABLE MR. HOSSAIN IMAM : Personally, Sir, I have much to say about this Bombay conference, which was as national as the Congress, and I will have my say when I get a suitable opportunity for that purpose.

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May I say, Sir, that it was for us gratifying news that His Majesty's Government has been so helpful to the defences of India, and we are grateful for all that His Majesty's Government has done. But that, as I said in the beginning, is no reason why we should be denied the right of seeing how things are being done. You may be very generous, you may not be able to get a penny more from His Majesty's Government, we may even set apart some amount which we are receiving from His Majesty's Government as a liability on ourselves; but that is no reason why we should not be associated in this apportionment business. The dictum of the Finance Member, when he told us about this system being adopted, was that the expenditure is first charged to His Majesty's Government and from that a sum which is the basic normal budget is deducted, then the effect of the rise in prices and changes in the recruitment rules regarding the pays and emoluments of the people serving in the army are taken into consideration, and after that there is the third item, *India's war measures*. Now, for that third item, which is an ever-growing sum there is no specific rule or regulation. An item may in the beginning be charged to India and then be again debited to His Majesty's Government. For instance, the expenditure in raising additional troops. That, Sir, is in the first place charged to Indian revenues and after those people are sent abroad, then perhaps—I am not positive—but perhaps their cost of recruitment, right from the time they were taken on up to the time of their departure, is charged to His Majesty's Government. That, Sir, is a very elastic and, if I may be permitted to say so, a very unscientific method of apportionment. During the discussion of the Budget in the November session as well as last March, I had occasion to say that it would be a more appropriate method and more in keeping with the spirit of things that the cost of the additional troops that are being raised should be shared by His Majesty's Government as well as the Government of India, irrespective of their location. The location of the troops, whether in India or outside its borders, does not affect the charges of our standing army. That is the rule which has been laid down at the present moment. Formerly up to 1938 the principle was that the cost of every army that was sent out was charged to His Majesty's Government. But in return for the increased contribution promised by the Chatfield Committee and the cost of the mechanization and modernization of the army, it was decided, again by the Government of India without consultation with the Indian people, that the location of the army would not matter. Even accepting that principle which in itself is open to discussion—but because of the war we may forego any objection that we may have on that subject due to the abnormal circumstances the matter is not concluded. Even if you accept that principle, that location is not the criterion for charging, may I say that the new army that is being raised is being raised primarily because of the absence of the old army and for other needs which are more urgent in other theatres of war than in India itself. I do not mean to say that all the men who are being raised in India are exclusively for use outside but they are for joint use and as such I venture to suggest, Sir, *that it would be a good accounting method if we were to come to some terms about the apportionment of the cost of the new armies being raised, irrespective of location*. That is the first point, Sir.

Then, Sir, you have to consider the magnitude of the sums which are involved and the effectiveness of the items on which these big sums are being spent. The normal Defence budget has been taken by the Finance Department at Rs. 45·28 crores. This has been taken including the non-effective charges as the normal Defence budget. But during the current year and in the coming year we are going to spend Rs. 72 crores and Rs. 84·13 crores,—

a total of Rs. 156 crores in place of the normal sum of Rs. 90·56 crores. Additional war expenditure in the current year and the coming year is to be Rs. 65·64 crores. This is the direct expenditure on account of the war. It is divided up into roughly half as initial expenditure and half as recurring. Rs. 33 crores are earmarked for initial expenditure. At the present moment, the Honourable the Finance Member envisages a capital expenditure of Rs. 52 crores. Out of that, he has only provided in two years for Rs. 33 crores and there is a probable liability of Rs. 19 crores still standing against us for initial or non-recurring expenditure. The recurring expenditure has been put on the present basis at Rs. 19 crores a year. I should like the House to realize the warning which the Honourable the Finance Member has sounded. In paragraph 28 he says :—

“ I should like here to impress upon the House the fact that in these estimates of Defence expenditure only such specific schemes and measures as are definitely under way or in sight have been provided for ”.

We have the experience of last year. After having provided for an expenditure of Rs. 6·59 crores on item 3—India's War Measures in the revised scheme it is costing Rs. 24·31 crores, a rise of nearly four times. I do not think that this time the difference will be as great. But it is quite on the cards that if we are able to get equipment and other things from abroad, we might have to increase our expenditure under this head of India's war measures. There is nothing definite even about the present sum of Rs. 34·40 crores for the coming year of which the Honourable the Finance Member has said that half is for initial cost and half for the recurring cost. When such a huge sum is involved, is it wrong that we should ask to be associated in it? You are having no War Advisory Committee. You are not transferring Defence to an Indian member. Are we to be denied even this small thing of seeing how the things are being done? I have no positive information as to the items on which this initial cost is being spent, but I have negative information from the Honourable the Finance Member and from the statement today of the Honourable the Finance Secretary that this initial cost does not include the cost of raising, training and equipping such forces as are transferred to places outside India. Secondly, it does not include the charges for equipment needed for modernization of the army in India and for initial equipment of units now being raised in pursuance of our expansion scheme. This negative information is conveyed by the Honourable the Finance Member in paragraph 20 of his speech, which means that all these things are being contributed very generously by His Majesty's Government. It also does not include, as we learn from questions and discussions in this House, the cost of heavy tanks, of fighters and bombers in any great number, and of regular anti-aircraft guns. As far as we have been able to find out from the Honourable Member and from other sources, we have not yet included in the expenditure of the current year the cost for light tanks, armoured cars, Bren guns, anti-tank guns, parachutes, etc., which are to be produced in India; because the equipment had not been received early enough to start manufacturing. The factories are on the way to being assembled, and they might be able to manufacture, in the year 1941-42 but, at the moment, the initial cost that we have incurred up till now does not include any of these items. Today, the Honourable the Finance Secretary conveyed to us the very good news that the expansion scheme is being financed by His Majesty's Government. That is quite in keeping with the practice of His Majesty's Government who have, according to the statement of Colonel Knudsen, Chairman of the United States Defence Committee, spent £43,000,000 in expansion of 61 factories in America. So, rightly, His Majesty's Government are bearing the cost of the expansion scheme in India. If you take the negative information of what is not being done, it is surprising how little is left as

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to what is being done. Sir, it should not be understood that we are grudging the expenditure. If need be, we are prepared to shoulder even greater expenditure on account of the war provided it is shown conclusively to be in the interests of India alone. When we ask for this, it is really a measure of help for the Government, because it will clear the air, suspicions will be removed, and they have nothing to fear, if, as I hope, they have no faults. They would come out of this committee with flying colours. Their reticence in giving information is quite in keeping with the national character of the Britishers who do not want to show any sentiment or feeling. But we are living in days when it is not enough that you are doing the thing well. You should prove that you are doing the thing well. You have to convince the people that you are doing well, and in that light I want the British Government of India to come out and show exactly what they are doing.

Sir, I move.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to support the Resolution so ably moved by my Honourable friend Mr. Hossain Imam. Our experience in the appropriations of the last Great War accounts showed that there was not a satisfactory apportionment of the war expenditure between the War Office and the Indian Government. All expenditure incurred abroad which did not exceed Rs. 50,000 was debitable to the Indian Government and bigger amounts were debitable to the War Office. Our information then was that big sums were split up into parcels of Rs. 50,000 and were thus debited to the Government of India.

Sir, at present we do not know where our Defence borders are and where the Indian Government's responsibility ends and that of the War Office begins. I should like the Honourable the Finance Secretary to throw some light on this. Does our Defence expenditure extend to Egypt or Benghazi or to Morocco or Shanghai and Singapore or where ? Of course we know that the British Government has intimated to us that all expenditure in connection with contingents sent by India abroad will be borne by the War Office, but we want this point to be made clear as to where our Defence borders now lie. Until we know that it is very difficult for the country to know how the apportionment of war expenditure is going to be made.

My Honourable friend Syed Hossain Imam has rightly moved this Resolution, but if you will allow me, Sir, I would propose a slight change in wording of the Resolution which might then be acceptable to the Honourable the Finance Secretary. I suggest, Sir, that instead of the words "approve of" the word "suggest" be inserted. I suggest that, Sir, because after all the committee will be only advisory and it will not have the power to approve anything. It will lie with the superior authorities to approve.

THE HONOURABLE MR. HOSSAIN IMAM : I have no objection, Sir.

THE HONOURABLE THE PRESIDENT : I will allow the amendment.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Then, Sir, in the second item of the Resolution my Honourable friend wants information as regards the past. I take that to mean the past war. He wants a report on the transaction of the past war.

THE HONOURABLE MR. HOSSAIN IMAM : No, since this war began only.

THE HONOURABLE THE PRESIDENT : That is an amendment the Honourable Member proposed before he started discussing the Resolution.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Then, Sir, the request made by the Honourable Member is a very modest one and Government ought to accept the Resolution and set the public mind at rest as to the actual apportionment of war expenditure between the Government of India and the War Office.

With these words, Sir, I support the Resolution as amended.

THE HONOURABLE MAULVI ALI ASGAR KHAN (Assam : Muhammadan) : Sir, in supporting the Resolution moved by the Honourable Mr. Hossain Imam I would say that the time is quite ripe when the Indian people should be taken into full confidence as they are sharing the responsibilities of the war with the British people.

Just as it is incumbent upon the Indian people to help His Majesty's Government with men and money, with the full resources of India, it is equally fitting for the Government of India to take them in full confidence.

The demand in the Resolution moved is quite justified. The Members of the Indian Legislature who are the representatives of the people have every reason to see for themselves how the Defence expenditure of India is shared by the Government of India and the Home Government. They should be allowed to scrutinize the same and give their suggestions.

Just as Indians are members of the great Commonwealth of Nations of the British Empire, when people of India, rich and poor, without distinction of caste and creed, are doing their utmost for the ultimate victory of the present war, when Indian rulers with open hearts are giving the full resources of their States for the help of the war, it is quite reasonable and in the fitness of things that they should be put in the position of responsibility.

There might have been some misgiving among the Indian people regarding the righteousness of the British people. But when Indians find that the democratic ideas and institutions acquired by them from British rule of the last one hundred and fifty years will go waste at the advent of Nazi onslaught, when their very liberty will be taken away and they will be reduced to slavery, they have no other alternative but to help the British people to save their own country from Nazi domination.

Since all their culture and tradition are set at stake by the impending danger. The people of this vast country have come forward with the British people to check the domination of Germany.

If the rulers of this vast country are tactful they should help the Indian in granting responsible government and treat them like the people of other dominions and as an earnest of the future grant of Dominion status allow the representatives of these people in the Legislature to see for themselves how the defence of India in the present circumstances are managed and in what proportion both the Home Government and the Government of India are sharing the expenditure.

I would therefore fervently appeal to the House and urge the Government to accede to the demand made in the present Resolution and give this my full support.

THE HONOURABLE MR. C. E. JONES (Finance Secretary): Sir, my chief difficulty in dealing with this Resolution is to know exactly the reason why it was put forward. From the Honourable Mr. Hossain Imam's opening sentences I gather that the object of the request made in this Resolution is to obtain greater information as to what we are doing in respect of the war and how the expenditure is being met. But I do suggest, Sir, that to associate a Committee with the day to day work of the Finance Department and the Audit Department is a very indirect method of obtaining information, and one which has serious implications of a practical nature to which I shall revert presently and elaborate, and of securing the end of view. The Honourable Mover referred to the financial settlement between His Majesty's Government and the Government of India as to the allocation of Defence expenditure. I think he made some observations which indicate that he thinks that the settlement might in some respects be improved. But for purposes of this Resolution, Sir, I do not think it is necessary for me to go into the details of this settlement which was explained by the Honourable the Finance Member in his Budget speech of a year ago and which still holds the field. I submit, Sir, that so far as the general question of apportionment of expenditure is concerned, that exposition of the settlement gives a fairly complete picture in a general way as to how this most important question has been decided. It is possible that because the expenditure falling to India is increasing some Members are apprehensive or have a suspicion, either that the settlement is not still applicable, or that it is not so favourable to India as was made out, or that the allocations, the detailed allocations, of expenditure according to the terms of the settlement are not being properly made. Now, I would suggest, Sir, that these apprehensions are on the face of them unfounded. It is not necessary to query the agreement or to suspect the allocations to explain why Defence expenditure debitable to India has risen. I would ask Honourable Members to cast their minds back to the events of last summer when France collapsed, to remember the widespread feeling that was experienced in India as to the inadequacy of India's defence measures, and the general and insistent demand that was made for expansion, and for rapid expansion. The Government responded by taking immediate steps to expand as far and as fast as certain limiting conditions, apart from finance, then permitted. Honourable Members will remember that when the first stage of the expansion was announced, a stage that was admittedly modest but yet very useful, it was generally decried as being totally inadequate. Events have moved fast since then and now, apart from the troops that are sent overseas, we are maintaining in India a much larger and a more highly equipped army than before, besides substantially increasing the Indian Navy and the Indian Air Force. Much of the larger public demand on Government has been met, and I believe that the public in general appreciate the fact that it has been met and realize that this involves paying the cost; and that it is only a small section of the community which jibs at meeting the bill. I have the Honourable Mover's statement that he does not object to meeting the bill. He just wants to satisfy himself that the bill is fairly due. I take it, Sir, that he does not consider that the United Kingdom should accept financial responsibility for the increased scale of India's local defence. I have seen it argued—and I am glad that it was not argued in the House here today—that the Chatfield scheme laid down a certain scale of Defence expenditure in India which should not be exceeded. As a matter of fact the Chatfield scheme was merely a peace time scheme for preparation for war—a defensive step in pre-war conditions. It is impossible for any country to fix in the piping days of peace a limit of their Defence expenditure which will not alter when the danger actually assails. India must necessarily meet the cost involved in measures undertaken in the interests

of her own local defence. In world conditions as they are today she would have to do the same were she neutral. The financial settlement between India and the United Kingdom recognizes that fact and assigns to Indian revenues the expenditure incurred on war measures undertaken in India's interests for her local defence. That settlement, the Honourable the Finance Member has said, was a favourable one for India and conceived by His Majesty's Government in a generous spirit. I would just stress one or two of the favourable aspects of that settlement. The first is that the only additional defence expenditure thrown upon Indian revenues, apart from that resulting from rise in prices, is the cost of measures undertaken directly for the purpose of the local defence of India; secondly, that when troops are sent out of India to engage the enemy outside her frontiers—and in answer to the Honourable Rai Bahadur Ram Saran Das as to what her frontiers are, for the purposes of this settlement the frontiers of India are the geographical frontiers of India—the whole of the cost of these troops which are so sent overseas becomes a charge on His Majesty's Government. All that India is paying on account of her external defence is the normal peace time cost of the relatively small external defence forces.

As a corollary we come to the third favourable aspect of this settlement, and that is that India is saved the huge cost of wastage of material which is inevitably incurred in actual hostilities. This wastage of war material constitutes a substantial element of war expenditure from which India, unlike the Dominions, is protected unless or until the war actually comes to India's frontiers.

And then the fourth favourable element of this settlement is that the entire capital expenditure on the expansion of ordnance factories is being borne by His Majesty's Government, and it should be noted that this comprises far more than the schemes of factory expansion included in the Chatfield plan. Without this expansion of munition production, for which His Majesty's Government is meeting the capital cost, it would have been impossible for India to supply or equip her expanded army.

These points which I have stressed will, I think, convince Honourable Members that the authorities out here have not been backward or remiss in safeguarding the interests of India in the agreement arrived at, and there can be no room for suspicion that they will not continue to do so in the practical application and working of the agreement. On the other hand, the fair and generous spirit displayed by His Majesty's Government is evident from the terms of the settlement itself, as I have just explained. Further evidence of the spirit in which His Majesty's Government are working this agreement is afforded by the facts—

- (a) that His Majesty's Government are continuing to implement the Chatfield scheme for the mechanization and modernization of India's standing army, although the present costs are greatly in excess of the original estimates, and
- (b) that in respect of the expansion units of India's army, the cost of which while they remain in India is properly a charge on India, His Majesty's Government have been providing free of cost considerable quantities of equipment which cannot be produced in India, such as anti-aircraft guns, anti-tank guns, optical and wireless equipment and so on. The cost of this equipment, which is supplied free by His Majesty's Government, over and above and outside the settlement, runs to many crores. This

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should surely show that there is no room for suspicion that in the practical application of this settlement India is not getting a fair deal.

So much, Sir, by way of background, which I have given at some length in view of the general tenour of the speeches made in support of this Resolution. I would now like to come to the actual subject-matter of the Resolution itself,—that is, the actual allocation of Defence expenditure in India between His Majesty's Government and India. This, of course, is a matter of supreme interest to the Government of India as it is to Honourable Members. But I think Honourable Members will also appreciate that it is a matter of not less than equal interest to His Majesty's Government. And each Government naturally desires to be satisfied that they are being debited by and large with their proper share of expenditure under the financial settlement. I should just like to explain briefly how that allocation is made.

The allocations are done in the first instance by the Finance Department of the Government of India. They are then subjected to check by the Auditor General of India who will certify that only India's proper share has been debited to Indian revenues. All the rest is automatically debited to His Majesty's Government. And it therefore follows that it is really the Auditor General of India who primarily watches the interests of both parties. Honourable Members are aware of the terms of section 166 of the Government of India Act, which places the Auditor General in a position of complete independence of any executive Government whatsoever, whether that be the Government of India or His Majesty's Government in England. His Majesty's Government and the Comptroller and Auditor General of England have agreed to accept the Auditor General's audit of all defence and supply expenditure in India, of which a large portion will be debited to His Majesty's Government, and I think that that is a very generous gesture on the part of His Majesty's Government when it is remembered that their part in this apportionment is that of giving and paying for the defence of India. Recently the Comptroller and Auditor General sent two of his officers out to India to discuss with the Auditor General of India our audit methods and methods of Treasury control over expenditure in order that the Comptroller and Auditor General and the Auditor General of India could agree on mutually acceptable standards of audit, and see that the arrangements for allocating war measures by the Finance Department were satisfactory to both parties. That the terms of the settlement are clear and definite enough to form a workable basis of allocation is evidenced by the fact that there has so far been no difference of opinion between either the Auditor General, the Government of India, the War Office, or the Treasury in England on any case, although some of the allocations have been very complicated. Now that, Sir, shows in general outline the procedure which is adopted and which has been agreed upon between the Government of India and His Majesty's Government. But when you picture the process of allocation as it is worked from day to day and from week to week, I think Honourable Members will realize that it is not suitable for and does not lend itself to the association of a committee on purely practical considerations. Government are not unsympathetic to the demands that are put forward for the association of non-officials with their war effort,—to prove which I would instance the Standing Committee which is now associated with the Department of Supply, His Excellency the Commander-in-Chief's undertaking to arrange some means of contact between the Members of the Legislature and the Defence Department, and the Standing Finance Committee which considers new expenditure debitable to civil estimates, most of which in present

circumstances is attributable to the war. These committees largely deal with questions of policy, but the actual mechanism of allocation of expenditure, which is an administrative process, stands, I submit, Sir, on a different footing altogether. The actual procedure by which these allocations are made is as follows:—First, statements of cases giving the reasons for the proposed measure and the cost are prepared by the administrative branches. Then these statements of cases are sent to the Military Finance Branch for financial sanction, and allocations are made on each of those statements of cases by the Military Finance Branch at the very time of according financial sanction. Then, thirdly, weekly meetings are held between the Finance officers and the Audit officers, when the Director of Audit, Defence Services, scrutinizes all the allocations made during the previous week. During this joint scrutiny, many points are raised which are settled as things go on. Then this procedure itself only covers running cases, but there is a big field which is not covered by statements of cases, in which specific allocations are virtually impossible and allocations have to be made on a broad basis,—for example, transportation and movement of troops, which may be due to a combination of factors such as normal annual moves, those due to expansion and those due to overseas requirements.

Now, supposing this Resolution were accepted by the Government and acted upon, we would have a body of Members of the Legislature who would have to study each of these statements of cases. They number something like 100 cases per week. Practically all of them are complicated and the pressure of work is such that it is not possible to set out every detail in the statements of cases in the same way as memoranda are prepared, say, for the members of the Standing Finance Committee. These statements are so prepared that they presume a vast amount of knowledge on the part of the recipient in the Finance Department, and this background of knowledge would have to be obtained by members of this Committee by taking each statement of case to the officer who prepared it or the financial officer who dealt with it and getting it interpreted in every day language. The amount of waste of time that would be involved would be enormous. The matters are so complex and they cover so wide a field that I doubt if any ordinary Member of the Legislature could master the subject except after several months of intensive study, during which time they would not be qualified to question the allocations made by the Government experts. And, in any case, the members of this Committee would have to be prepared to put in daily attendance for long hours in order to keep abreast of the work.

The existing officers of the Military Finance Department could not possibly spare the time for all these explanations. We should have to appoint one or two additional officers whose full time would be spent in coaching up and helping this Committee, and these officers newly employed would in turn have to acquire the necessary information from the dealing Finance Officers, and it is very doubtful whether the dealing officers would have time both to deal with the cases that come before them and to explain them to some one else. Furthermore, in the matter of personnel, we are now so down to bed-rock that it is very doubtful whether we would be able to get the additional officers at all.

I have said, Sir, that these allocations are mostly difficult and complicated. I propose to give an example, selected more or less at random, to illustrate this, because I dislike talking throughout in generalities. I tried to get a recent case, but so many of them are bound up with some military secret which it is not expedient to disclose, and so to be on the safe side I have taken

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an old case, that of reserve of bombs. The Chatfield scheme gave us a certain number of modernized air squadrons. The scheme also allowed us a bomb factory and the scheme fixed a certain scale of reserve for bombs. When war broke out, we had not received the modern aircraft and we had not got the new bomb factory, and the machines with which we had to deal could not utilize modern bombs. Meanwhile our reserve of the old fashioned bombs which were suited to our old fashioned machines had run out, and the time-lag in supply from England increased. Therefore, we had to order a reserve of obsolete bombs from England, and on a scale much higher than that agreed to by Chatfield because we had to have a bigger reserve to provide for the greater time-lag. The cost of this bomb reserve of old fashioned bombs came to something like Rs. 38 lakhs and the problem was how to allocate the expenditure between His Majesty's Government and the Government of India. The complications of the case are obviously more apparent than the solution.

That is by no means an isolated case. This sort of problem is arising day to day and week to week. I could multiply that example many times. But one reason why I have selected this particular case is that it brings out so clearly another point that I wish to make. If you consider the question of that information being divulged at the time the case arose, you will appreciate that nothing on earth would have induced us to expose a weak position of that sort. The information that I have just given you, at the time it arose, would have been highly secret and could not possibly have been divulged in the national interests. Fortunately, subsequent developments have made it no longer necessary for us to treat that particular case as secret. But generally it is true that current allocations, as they arise from day to day and from week to week, can only be judged in the light of exhaustive knowledge of all secret military, naval and air force measures in hand. You cannot allocate Defence expenditure until you know exactly what it is for, why it is being incurred, and what is the necessity for it, which means viewing it in the light of military information very much of which is secret, which would not be divulged in England to Members of Parliament, and which similarly cannot be divulged here. I think Honourable Members will agree as to the desirability or rather the necessity of limiting the number of persons to whom vital secret information of this sort, which might be of great value to an enemy or a potential enemy, should be limited to as few as possible.

There is one other consideration which I should like to bring forward. I have already referred to the fact that His Majesty's Government and the Comptroller and Auditor General of England, after satisfying themselves as to the methods of Treasury control over expenditure in India and the audit methods followed here, have agreed to accept the allocations as made by the Finance Department of the Government of India and as certified to by the Auditor General of India. You thus get a balanced and agreed procedure for allocation, and it is most improbable that Parliament will question the *bona fides* of the Government of India in this matter or that they will suggest that Members of Parliament should be sent to India to watch the allocations on behalf of Parliament. But I think they would naturally expect that the Indian Legislature would adopt a similar attitude, especially as the Indian Legislature has the assurance that if the Auditor General is not satisfied in respect of any allocation, he will bring the matter to the notice of the Indian Legislature through his annual report and the Public Accounts Committee. If now the equilibrium of this procedure were to be upset by associating a Committee of the Indian Legislature, Parliament would have every reason.

and every justification for demanding a corresponding association of a Committee of the House of Commons in this process of allocation which, of course, would be beset with practical difficulties on account of the disturbance to communications between the two countries resulting from the war. The result would be that the whole thing would again be thrown into the melting pot. This is clearly a result not to be contemplated with equanimity.

I do not put this forward as a frivolous argument. I think it is self-evident that where we have a nicely balanced procedure for allocation, which on the face of it is as sound, impartial and fair as we can get it, which has been accepted by the Government of India and by His Majesty's Government, and then we proceed to disturb that equilibrium by associating a Committee of the Legislature of India alone (which it may be supposed would exert a pull in favour of India and against England in so far as it had any practical effect at all) Parliament would naturally expect that they should have the same protection to the interests of the British taxpayer as this new departure is designed to give to the Indian taxpayer. For these various reasons, Sir, that I have given the Government find it exceedingly difficult to accept this Resolution and I feel confident that the Honourable Mover and this House generally will regard the reasons that I have given as being not only reasonable but convincing.

THE HONOURABLE MR. HOSSAIN IMAM : Mr. President, the Honourable the Finance Secretary had prepared his batteries so well that in the end he did not conclude with the usual words with which Government Members conclude, namely, that Government will oppose the Motion. So far as the question of getting information was concerned, I think this Resolution has served its purpose. We have received very valuable information from the Government and I must admit that the difficulties which the Honourable Mr. Jones has brought forward seem on the face of them to be insurmountable. Even that is a departure from the Government method, that it has tried to justify itself on the broad basis of reason. Usually the Government does not care so much to convince the people as it tries to show that it is itself convinced and that that ought to be the reason for our conviction. The reason why I brought forward this Resolution was not primarily for looking into the day to day administration, but for laying down the broad principles. If the Honourable Member is prepared to consider some method by which Indian approval can be taken I would be satisfied. I do not suggest what should be the method, but at the moment the agreement entered into is between two departments of His Majesty's Government, the War Office and the India Office. Defence is a matter which is entirely in the hands of the Governor-General, in which he acts in his discretion and on his individual judgment, in which Indian opinion is not associated. It is not subject even to any token votes. The votes also I call " token " because they can be restored. But even that amount of control or association of Indians is denied. Now I suggest that you have entered into a settlement which on your own showing make out to be a favourable settlement of this question. Then why not get the approval of Indians and say that you are governing India with the consent of the people and not like Hitler who rules only by force of arms ? The difficulties could be surmounted, provided we restricted the operation of this Resolution to broad principles and not to day to day administration. I never contemplated that it would be a body which would sit every day and approve of the allocations. You have a system in every department whereby power is transferred by degrees ; whereby up to a certain point the Under Secretary deals with matters, above that the Deputy Secretary or Joint Secretary and so on, until the point

[Mr. Hossain Imam,]

when matters are subject to decision by the Honourable Member. Similarly here you could lay down a principle by means of which certain matters only would come up to this Committee while other day to day administration would be left to the ordinary officers. Of course the officers are there and will remain there, and their work cannot be taken on by the Legislature. Even the Legislature here relies on the administrative and judicial officers of the Crown. You can not contemplate the Legislature taking the place of the administrative officers.

Sir, the only jarring note which I have to sound is about the Auditor General. The Auditor General is the most competent person to examine and to give his opinion. But he is subject to one restriction. He must see that the rules are followed. But he has no hand in making the rules. The rules are made by the executive authority and you cannot take shelter behind the name of the Auditor General and say that because he is examining the expenditure it is unquestionable. It is unquestionable as far as the rules are concerned. The rules being given, the Auditor General sees that they are carried through. But the rules are framed by the executive and it is just here that the weakness of the Government case comes in. Indians might be associated with the rule-making power at any stage you like, but associate Indians with your work. You say that these things are military secrets. If I may be pardoned for saying so, that is really adding insult to injury. We are in our own house. We are not such outsiders that everything should be hidden from us. I know that there are details of day to day work which even Parliament does not get, but the Parliament has this satisfaction that the man at the helm is one of its own men. We do not get even that satisfaction and still you say that we are unreasonably suspicious. As I said at the beginning, there is no suspicion against our executive. It is a matter of satisfaction. Are you prepared to satisfy us? If you desire to satisfy us you can find ways, but if you have no desire you can have more difficulties than those that have been cited by the Government at the moment. I said in the very beginning that I had no desire to embarrass the Government. I had no grudge against the expenditure which is being met. I am prepared that India should spend even a larger amount of money than it is doing. But what I said at the beginning I say still, that this does not satisfy us. Nothing can satisfy where the question of national honour is concerned. It is a question of national honour, whether we are to be trusted or not. I remember that in the Life of Lord Minto he deals with the question about how suspicious the people were when he first mooted the question of having Indians in the Executive Council. Those days have not passed. Even 31 years afterwards the British people are living in the same old world and they still are suspicious. Just as trust begets trust, suspicion begets suspicion. You cannot have it both ways. I appeal to the Government to do something to satisfy Indians. Just as we are ready to trust them, they ought at least to go out of their way to satisfy us that things are being done as we wish.

THE HONOURABLE THE PRESIDENT : I understand you want to press this Resolution?

THE HONOURABLE MR. HOSSAIN IMAM : Yes, Sir.

THE HONOURABLE THE PRESIDENT : I do not think, Honourable Mr. Jones, that after your very able and exhaustive speech you could add anything by way of reply?

THE HONOURABLE MR. C. E. JONES: I would only wish to add that I deliberately kept off the constitutional question, realizing that the constitutional position, however regrettable it may be, must be accepted as one of the facts of the situation in one's approach to this question, and to express on behalf of the Honourable the Finance Member, as I should have done at the beginning of my reply, his regret that he was unable to appear in this House in person to deal with a question of this sort which is bound to impinge to some extent on the constitutional field.

THE HONOURABLE THE PRESIDENT: Resolution moved :

"That this Council recommends to the Governor General in Council to form a Committee of Members of the Indian Legislature (i) to scrutinize and suggest the apportionment of Defence expenses between the Government of India and His Majesty's Government and (ii) to submit a report on the past transactions since the war."

Question put and Motion negatived.

STANDING COMMITTEE FOR ROADS, 1941-42.

THE HONOURABLE THE PRESIDENT: At this stage I would like to make announcements regarding elections to committees.

With reference to the announcement made by me on the 11th March, regarding nominations to the three committees, I have to announce that the following Honourable Members have been nominated for election to the Standing Committee for Roads :—

1. The Honourable Saiyed Mohamed Padshah Sahib Bahadur.
2. The Honourable Rai Bahadur Lala Ram Saran Das.
3. The Honourable Rao Bahadur K. Govindachari.
4. The Honourable Mr. R. H. Parker.
5. The Honourable Haji Syed Muhammad Husain.
6. The Honourable Mr. N. K. Das.

There are six candidates for three seats and an election will be necessary. The date of election will be announced later.

CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE THE PRESIDENT: The following Honourable Members have been nominated for election to the Central Advisory Council for Railways :—

1. The Honourable Sardar Buta Singh.
2. The Honourable Rao Bahadur K. Govindachari.
3. The Honourable Sir David Devadoss.
4. The Honourable Mr. Abdool Razak Hajee Abdool Suttar.
5. The Honourable Mr. V. V. Kalikar.
6. The Honourable Kumar Nripendra Narayan Sinha.

[Mr. President,]

7. The Honourable Nawabzada Khurshid Ali Khan.
8. The Honourable Haji Syed Muhammad Husain.
9. The Honourable Lt.-Col. Sir Hissamuddin Bahadur.

There are nine candidates for six seats and an election will be necessary. The date of election will be announced later.

STANDING COMMITTEE FOR THE DEPARTMENT OF COMMUNICATIONS.

THE HONOURABLE THE PRESIDENT: The following Honourable Members have been nominated for election to the Standing Committee to advise on subjects other than "Roads" dealt with in the Department of Communications:—

1. The Honourable Mr. Abdool Razak Haji Abdool Suttar.
2. The Honourable Rai Bahadur Sri Narain Mahtha.
3. The Honourable Haji Syed Muhammad Husain.

There are three candidates for three seats and I declare them duly elected.

RESOLUTION *RE* FEDERAL COURT.

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

"That this Council recommends to the Governor General in Council to take such steps as may be necessary to enlarge the Appellate Jurisdiction of the Federal Court to the maximum extent permitted by section 206 of the Government of India Act, 1935."

Sir, before I come to the subject-matter of the Resolution, perhaps the House will permit me to express its deepest sorrow at the premature death of Sir Shah Suleiman. The Federal Court has in his death sustained a very severe loss. He was one of the most brilliant products of the Allahabad University. He distinguished himself greatly as a Judge and Chief Justice of the Allahabad Court and we who belong to the United Provinces were rightly proud of him. Our Court has sustained during the last month two severe losses. We have lost a very great Chief Justice in Sir John Thom and we now have lost Sir Shah Suleiman who was not only an eminent Judge but also an eminent scientist.

Sir, the subject-matter of this Resolution has been once before this Council, but my Resolution is different from the Resolution which was moved by the Honourable Haji Syed Muhammad Husain on the 21st March, 1938. The Honourable Haji Syed Muhammad Husain wanted a court of criminal appeal also. I say nothing in my Resolution about the court of criminal appeal. I take my stand on section 206 of the Government of India Act of 1935.

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

The principle of a supreme court of civil appeals is no longer an open question. The principle of having a supreme court of civil appeals in India has in effect been accepted by the Government of India Act of 1935. There were two points

of view before the Joint Select Committee, one was that there should be a separate supreme court for India and the other was that the Federal Court should have two jurisdictions, that is, it should have certain appellate powers and it should have as a Federal Court certain constitutional powers. The Joint Select Committee came to the conclusion that the best arrangement was to have the Federal Court functioning as a Federal Court; also after experience had been gained and the Indian Legislature had made a particular recommendation to the Secretary of State, the Federal Court should be given the powers of a supreme court also. They say :

" There is much to be said for the establishment of a Court of Appeal for the whole of British India, but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal Court, and we think that the Legislature should be empowered to confer this extended jurisdiction upon it. It has been objected that not only would so great an increase in the personnel of the Court be required as to make it difficult to find a sufficient number of Judges with the necessary qualifications but also that the essential functions of the Federal Court as guardian and interpreter of the Constitution would tend to become obscured. We fully agree that the quality of the Federal Judges is a matter of the highest importance and that nothing ought to be done which might diminish or impair the position of the Court in its constitutional aspect, but we think that the fears expressed are unfounded. In the first place, it is clear that there would have to be a strict limitation on the right of appeal, so as to secure that only cases of real importance came before the Court; and, if this were done, we see no reason why a comparatively small number of additional Judges should not suffice. Secondly, we assume that the Court would sit in two Chambers, the first dealing with federal cases, and the second with British India appeals. The two Chambers would remain distinct, though we would emphasize the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber, as the Chief Justice might direct, or Rules of Court provide; but beyond this we do not think that the two Chambers should be interchangeable ".

Sir, the recommendation of the Joint Select Committee is embodied in section 206 of the Government of India Act and I have invited the attention of the Council to that section in my Resolution itself. I will just, Sir, with your permission, read out section 206 so that the Council may know exactly what that section is :—

" (1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act, an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(a) the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding sub-section, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion ".

Therefore, Sir, the principle of a Supreme Court has been accepted by Parliament itself, and the chapter of the Act is to be brought into force by an Order in Council, and as I understand it the Order in Council will have to be laid before Parliament. Sir, I do not, therefore, propose to argue the case for the establishment of a court of civil appeal in India. I do not propose

[Mr. P. N. Saprū.]

to argue the case for the extension of the Federal Court's jurisdiction. The principle has been accepted already by the Joint Select Committee in their Report. But I would like to point out certain considerations in favour of my Resolution. No lawyer will deny that the Privy Council has done most valuable work so far as the laws of this country are concerned. We get in the Privy Council Judges of the very highest eminence who can bring to bear upon the work before them a trained legal mind, and some of the best judgments on the personal laws of the Hindus and Moslems are to be found in the decisions of the Privy Council. It is a great tribute to them that without ever having visited this country, without knowing the laws and customs of this country, they are able in ninety-nine cases out of a hundred to arrive at satisfactory decisions and conclusions. But, Sir, conditions in India have changed, India is moving towards Dominion status, and naturally Indians feel that they must have a court of appeal in this country such as Canada has and such as Australia has. In Australia you have the State Supreme Courts and you have the High Court thereto which appeals from the State Supreme Courts lie, and it is only in very rare cases that appeals go to the Privy Council. That is also, as far as I know, Sir, the position in Canada. Now, Sir, the Indian judicial system has improved considerably. Our Bars are much stronger than they were before. Our Benches are also equally strong and we have sufficient legal talent in this country for a Supreme Court of Appeal. Sir, the litigants find the Privy Council machinery in many cases very expensive. They have to communicate through a solicitor with their counsel. They cannot directly get into touch with the solicitor, they cannot instruct in most cases the solicitor directly. It is only rarely that you can get an Indian counsel to go and instruct the counsel who is going to argue the case before the Privy Council. Sir, litigants, therefore, who want to take a personal interest in the case, who wish to instruct the solicitors personally cannot do so. The system, therefore, is very defective from this point of view. It handicaps the litigant who wants his case to be explained to the leader who is going to argue the case before the Privy Council by the men who have conducted the case in the courts below.

Then, Sir, there is another difficulty which has been created by the war. In war time the difficulties of appeal to the Privy Council are very great. There are shipping difficulties, there are mail difficulties. There is the difficulty of getting into communication with the solicitors and with the counsel and therefore the question of the extension of the jurisdiction of the Federal Court has become an urgent one from the point of view of the Indian litigant. Justice delayed is justice lost. A man who is fighting a case wants to have the fruits of victory in his lifetime and if he is going to spend a whole lifetime over litigation, well, it would be no consolation to him to feel that after his death the case will be disposed of by the Privy Council. Therefore, Sir, the whole question has become an urgent one from the point of view of the Indian litigant public. Although, Sir, we have in the Federal Court three eminent Judges (we have just lost one but his place will soon be filled) I do not think that it can be said that the volume of work in the Federal Court at present is very great. If you compare the amount of work that is done by the High Courts and that done by the Federal Court you will find that the amount of work in the Federal Court is very, very little. The Federal Court at present has original jurisdiction in a certain class of cases, appellate jurisdiction in a certain class of cases and advisory jurisdiction in a certain class of cases. But these cases are few and far between. They are not sufficiently large in

number, and for days and months together the Federal Court as a Court sits practically without any work. It has given some very able and illuminating judgments on questions which have come before it. But I am sure that even the Judges of the Federal Court find this leisure too tiresome. We all want to do some work. If there is not enough work, we do not know at times what to do with ourselves. Therefore, even from the point of view of the Judges of the Federal Court, it is desirable that there should be an extension of the jurisdiction of the Federal Court. If you have a court of civil appeals, you will probably have to increase the number of the Judges. It ought not to be difficult, even in war time, to take up this question. If the Government of India and the Secretary of State make up their mind, the necessary Order in Council can be issued in no time. I believe, Sir,—I do not know how far it is true, but we in legal circles have heard that all the High Courts excepting the Calcutta and Bombay High Courts are in favour of extension of the jurisdiction of the Federal Court. I do not know whether this is correct or false. But this is the general impression that prevails in legal circles. I do not know what the particular reasons of the Calcutta and Bombay High Courts are. But I think, if my information is correct, that the views of the other High Courts ought to prevail in this matter. Even if steps are taken immediately, it will take time for the appeals to be heard by the Federal Court. But I think the Federal Court will not remain long without work, because, in most High Courts you have a system of printed paper books, and the printing of the Privy Council record in most High Courts is not a very difficult matter. Some of the cases which are pending in the Privy Council can be transferred to the Federal Court if the litigants so desire, and the litigants can have more expeditious justice.

I would like to say, Sir, that I would not like the efficiency of the judiciary to be impaired in any way and I hope that the practice of appointing men of the highest eminence, men who command the confidence of the litigant public, men who command the confidence of the profession, will continue. I say this, Sir, because I do not want the reputation of the highest court of justice to suffer in the slightest degree. The first appointments, as we all know, have been excellent and there is no reason why subsequent appointments should not be as good as the first appointments.

Sir, as I have said, this Resolution raises no question of principle. The principle has already been accepted by the Joint Select Committee. I would, therefore, with these words, commend this Resolution to the acceptance of the House. I have already pointed out that my Resolution is different from the Resolution moved in 1938 by my friend the Honourable Haji Syed Muhammad Husain, who wanted to establish a Court of Criminal Appeal also. This proposal had been considered and rejected by the Joint Select Committee. But I can claim for my proposal that it has the approval and the blessing of the Joint Select Committee.

With these words, Sir, I commend my Resolution to the acceptance of the House.

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI (Leader of the House): Mr. President, I shall naturally leave my Honourable friend Mr. Conran-Smith to deal with the Resolution. But, as my Honourable friend Mr. Sapru referred to a recent sad event in the opening part of his speech—I allude to the death of the Honourable Sir Shah Muhammad Suleiman—I hope you will permit me to say a few words about that. I recognize that he was not a Member of this Legislature, and but for the fact that my Honourable

[Sir Girja Shankar Bajpai.]

friend's Resolution deals with the Federal Court, possibly my intervention in that sense would not have been in consonance with the practice of the House. But as the Federal Court has been mentioned, and Sir Shah Suleiman was a very distinguished member of the Federal Court, I hope you will not consider it either improper or irrelevant that I should, on my own behalf and on behalf of Government, associate myself with all that was said by the Honourable Mr. Sapru as regards Sir Shah Suleiman. I had the privilege of knowing him, and even more than knowing him, knowing of him from others who were competent to judge of his greatness as a lawyer, as a judge, and as a scholar in spite of his versatility, a man of most charming modesty. In his death the Court has lost a great Judge and India a great Indian.

THE HONOURABLE MR. J. H. S. RICHARDSON (Bengal Chamber of Commerce): Sir, for some time past it has been open knowledge that the Government of India have had under consideration the question raised in this Resolution and I believe they have consulted Provincial Governments and the High Courts in India. Whilst it would indeed be interesting to learn the result of these inquiries and particularly whether it is a significant fact that the two High Courts from whence most of the Privy Council appeals emanate are strongly opposed to the proposal, I am not at the moment concerned with this side of the question. My principal concern and indeed I may say my complaint is that commercial interests have not been consulted either by the Central Government or by the Provincial Governments except, I understand, in the case of Madras. It is, to say the least, curious why all Provincial Governments except Madras should have seen fit to disregard the commercial community, who, I believe I am correct in saying, constitute the largest body of litigants and consequently whose views should be of immense importance in any decision which may be arrived at on this question. Any action taken under section 206 of the Government of India Act, 1935,

I P. M. will certainly affect the Central Government, Provincial Governments and High Courts, but those whom it would affect most of all have so far, with the one exception I have mentioned, been entirely disregarded which I think is not only most unfortunate, but unwarrantable. I should like some explanation as to how this has come about and how it is that the consideration of the question has reached such a stage without Government having taken steps to obtain the views of those whose pockets and property are likely to be seriously affected one way or the other by any alteration in the present system. If the opinion of commercial litigants had been obtained, I venture to predict that such opinion would be found standing shoulder to shoulder with those High Courts and other bodies which have expressed themselves as being opposed to India being severed from the Judicial Committee of the Privy Council either permanently or temporarily.

It may be said that a change of the nature proposed would save litigants expense. Commercial experience will not bear this out and in fact it is greatly feared that the reverse will be the case and litigants will find themselves involved in far greater expense than at present. It may also be argued that on account of the war inordinate delay in the hearing of appeals to the Privy Council is creating undue difficulties. This in my opinion is no argument since even in peace-time a Privy Council case is not heard until some 18 months or two years after reference. Further to this, I have not heard of any difficulties being experienced regarding the availability of counsel in England during the war. London is carrying on and in the words of a film which has been shown in Delhi during the past week, "London can take it".

In conclusion, Sir, whilst I appreciate to the fullest extent the natural desire of any country to have its own organization which can adequately deal with all questions of a legal character which may arise within the area of its autonomous government the Judicial Committee of the Privy Council is, I submit, a body which, strictly speaking, has no location in the eyes of the law since the Sovereign is everywhere throughout the Dominions. This being so, appeals to this famous body cannot be incompatible with the natural desire for a country to have an adequate Tribunal within itself. The Privy Council is not looked upon in any sense as of foreign intervention or as a foreign over-riding Tribunal. India has always valued this Judicial Committee, comprising as it does, most eminent legal personalities including Indians, in whom absolute reliance may be placed as a final and unwavering defence against injustice. The judgments of the Privy Council are, I believe, considered to have had an unparalleled quality and an incomparable influence on the administration of law in this country. It has, I believe, been pointed out that appeal to the Privy Council is not a right but is at the King's discretion and in opposing the Resolution, I hope Government will give commerce and industry an assurance that full reference will be made to them before any decision is arrived at which would in any way prejudice our rights of utilizing His Majesty's discretion.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadian) : Sir, I rise to support the Resolution which has been so ably moved by the Honourable Mr. Sapru. I have not been able quite to follow the arguments of the Honourable Mr. Richardson in opposing the Resolution, but I must say that in the present economic position of the people of India it is too expensive to go to the Privy Council and to get a hearing in that Honourable Privy Council not earlier than 18 months after the appeal is filed. The Honourable Mr. Richardson admits that there exists much delay in the hearing of cases by the Privy Council. It is quite clear that as the Federal Court here has not very much work to do it will be able to decide such cases much quicker. I am not a legal man but I think appeals from the Federal Court can go to the Privy Council. But why delay the judgment ? As my Honourable friend Mr. Sapru has rightly observed, justice delayed is justice denied. Therefore, Sir, in the interests of the Indian public and looking to the present political situation of the world due to the war, I think the request of my Honourable friend the Mover of the Resolution is a modest and a reasonable one, and I hope the House will give it favourable consideration. I also associate myself with the remarks of the Honourable Mover and the Honourable the Leader of the House regarding the demise of the Right Honourable Justice Shah Suleiman, whose loss we all mourn. He was a great personality and was one of the worthy Judges that adorn the Federal Court.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadian) : Sir, I join in the tribute paid to the memory of the late Sir Shah Suleiman. His death has removed from the world one of its most outstanding figures. Sir Shah Suleiman was an intellectual giant, a man of versatile genius. Not only was he one of the eminent lawyers in the country, he was also one of the greatest mathematicians and a scientist who enjoyed a world reputation. By the death of Sir Shah Suleiman our country has lost a very great personality whose place it will be difficult to fill either in this or the generations to come.

[Saiyed Mohammad Padshah Sahib Bahadur.]

As regards the Resolution moved by my Honourable friend Mr. Sapru I am sorry that I have to oppose it. My first objection is on the ground that my Honourable friend has somehow thought it advisable to keep criminal jurisdiction out of the extended powers proposed for the Federal Court. At least I gathered that from his speech. My view is that if there is any necessity for any court to be established here or for any extension of the right of appeal to be given to litigants in India, it is in the field of criminal jurisdiction. We all know in the case even of the extreme penalty of death in cases of murder, there is only one appeal allowed to the person concerned. In matters of civil appeal, where after all only private rights are concerned, there are two appeals and also a revision. But in the case of criminal matters, in cases of murder, there is only one appeal, because the first sentence is passed by the Sessions Court and when there is an appeal against it and the appeal is decided by the High Court there is no other forum to which a second appeal could be made by the person against whom the sentence has been passed. I feel if there is any necessity for any court of second appeal to be instituted it is for a court which could take cognizance of criminal matters in the stage of second appeals. Since this thing has been got out of the purview of the Federal Court according to the recommendation which my Honourable friend Mr. Sapru has made, I am opposed to this Resolution. That is one of the many reasons for which I am opposed to this Resolution.

The second point is that the Federal Court established in the country envisages a state of affairs where there would be one institution for dealing with certain branches of administration for the whole of India, but as Honourable Members know there are different suggestions in the air. There are people who think that there should be two parts of India, that there could not be only one united India with a unitary Government and therefore one has to consider that at a time when things are in the melting pot, before we know whether there is going to be this kind of division in the country, having two independent units, whether it would not be premature to take any steps which would go to give jurisdiction over the whole country to any one institution established in the country itself. From that point of view, I feel that the suggestion is rather premature. It is something like putting the cart before the horse. So far as the present procedure is concerned, I feel that unless things are more definitely settled and India is in a position to have everything for itself, to have self-governing institutions here in other respects also, it would be rather premature for us to take the step which has been recommended by the Honourable Mover; and the view which I have expressed is the view which has been taken by one of our great patriots, Mr. Motilal Nehru. He too was of opinion, when a similar Resolution was moved in the other House that until India was self-governing it was premature to think of having any supreme court in the country itself. On these grounds I oppose the Resolution.

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official): Sir, it is indeed very difficult to ignore the point of view raised by the Honourable Mr. Richardson that the commercial community should be consulted no doubt in any radical change that may be effected in the administration of justice in this country; but he need have no misgivings. The point of view which he urged before this House was clearly and definitely considered by the Joint Parliamentary Committee at the time and provision in section 206 of the Act has been made after full consideration of the interests of all, including the principle so very eloquently urged by the Honourable Mr. Richardson. The

question before this House is not whether the commercial interests were consulted or whether any High Courts have said anything, but the case which has been placed before the House so clearly by the Honourable and learned Mover must be taken into consideration. The learned Mover has said that the present constitution of the Federal Court is such that it has hardly work for a few days in the year. In fact he says that for months together the Court has to be quite idle. No doubt the judges draw their salaries and the establishment draws its salary in full, but yet the Court has no work whatever according to his experience and knowledge and therefore it is suggested as one reason that some work should be provided for the Federal Court. I concede, Sir, that the arguments which the Honourable and learned Member for the University of Allahabad—

THE HONOURABLE MR. P. N. SAPRU : Unfortunately the University has no vote here.

THE HONOURABLE SIR A. P. PATRO : The Honourable and learned Member has placed before this House arguments sufficiently convincing to a reasonable person that the Federal Court ought to be suspended not that its power should be extended but it should be suspended altogether, because it is born premature. In the anxiety for bringing in Federation this organization has been ushered in without any consideration of what is to come afterwards. The Federal Court is a misnomer within the meaning of the Act of 1935. The Federal Court could only function under certain conditions as stated in the Act of 1935. Before the Federal Court has come into being and before the organization for Federation has been inaugurated and anything like federal formation has been made, this Court was started and was started prematurely. That is one reason why there is no work for this Court, and the little work that it has is divided into three parts, first the original jurisdiction, appellate jurisdiction and occasionally the third part of its functions is supervision. With regard to original jurisdiction we have not yet seen how it could arise between province and province when there is no Federation. Appellate jurisdiction comes in only after the High Court has given leave for appeal. Politicians advocated from time to time and have said, "We do not want Privy Council appeals for India; we want a Privy Council for India itself." No doubt that is a constitutional and political matter. It is in the way of a constitutional change for political power and political purpose. Whatever that may be, as things stand at present, the Honourable and learned Mover has established a strong case for suspension of the Federal Court and not for expansion of its jurisdiction. I have often criticized the inauguration of the Federal Court both in the press and on the platform and said that it is a little premature, that it is a mistake that it should have been inaugurated before the arrangements for Federation of Provinces and Indian States had taken a definite shape or definite form. To my mind it is a political error; and therefore I do not want to have any powers extended to it and I would be glad if the Federal Court is suspended.

THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary) : Sir, in dealing with this Resolution I do not propose to detain the House very long. Honourable Members are already aware that the question of enlarging the appellate jurisdiction of the Federal Court has been engaging the attention of the Government of India. I might add now for the information of Honourable Members that a reference has been made to the Secretary of State on this question. But I hope the House will understand Government's position

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when I say that, since the matter is still in a preliminary stage, it is not possible for me now to divulge the nature of the consultations which are in progress. Nor, as I hope the House will agree, will it be possible for Government to accept a Resolution which commits them in advance to a certain course of action. So important a step as that contemplated in the Honourable Mover's Resolution, namely, the substitution of the Federal Court for the Privy Council in civil appeals, could not be taken without the fullest consideration and study of the various implications of such a proposal. But should concrete proposals emerge as a result of this preliminary consultation then the public will no doubt be given an opportunity of expressing their opinion thereon and in the public, of course, I include commercial bodies the value of whose opinion on a matter of this sort Government, I can assure the Honourable Mr. Richardson, do not underrate.

Having said that, I do not think the Honourable Mover will expect me to take the fly which while fishing for information regarding the opinions expressed by provincial High Courts he threw to me, nor do I think I need pursue the line of argument taken by Sir A. P. Patro, although his viewpoint will, with those of others expressed in this debate, be brought to the notice of the Secretary of State. I should, however, like to correct one misapprehension under which, I think, my Honourable friend Sir A. P. Patro at the moment labours. If I understood him rightly, he said that, as there was no Federation, no case could arise between the provinces and the centre. If that was what he said, I must tell him that there has already been a case arising between a province and the centre which came before the Federal Court.

THE HONOURABLE SIR A. P. PATRO : There was sufficient organization for appeal in such cases before the Federal Court came into existence.

THE HONOURABLE MR. E. CONRAN-SMITH : I quite understand my Honourable friend, Sir, but it was only on a point of fact that I was venturing to correct the Honourable Member's statement.

Well, Sir, bearing in mind the observations made this morning by my Honourable friend Mr. Hossain Imam on the subject of Government spokesmen making a habit of saying that Government cannot accept a Resolution, I am myself reluctant to use that expression but I hope from what I have said and from such information as I have been able to give this House, Honourable Members will appreciate that it would not be possible for Government at this stage to tie themselves down by accepting the Resolution moved by my Honourable friend Mr. Sapru.

THE HONOURABLE MR. P. N. SAPRU : Mr. Chairman, the Honourable Mr. Richardson, in opposing the Resolution, stated that most appeals go from Calcutta and Bombay. I do not think that that is a fact. I think, if he would care to read the statistics of appeals, he would find that the largest number of appeals provided for for the Privy Council is from the United Provinces, or to be exact, from the Provinces of Agra, Oudh and Madras. Those are the biggest litigant provinces in the country. They are big zemindari provinces and if the commercial community has a grievance that it has not been consulted, surely the landed community too has a right to be consulted ? The Honourable Mr. Richardson said that commercial interests had not been consulted. I do not know what he means by commercial interests.

He means the British commercial interests, and for him British interests are supreme. I do not know, Sir, whether his opposition to the extension of the jurisdiction of the Federal Court is shared by the Indian commercial community, the commercial community which counts and which ought to count in any normal country as the real commercial community. I think, Sir, the biggest commercial magnate in this House, so far as Indians are concerned, Rai Bahadur Lala Ram Saran Das, stated that the view of the commercial community is that the jurisdiction of the Federal Court ought to be extended. I should like to know, Sir, if the view of the Indian Merchants Chamber is different from the view of the Honourable Rai Bahadur Lala Ram Saran Das. I know, Sir, that European commercial interests count more with the Government than Indian commercial interests but the fact of the matter is that India is not a normal country. India is a country for the exploitation of British capitalists. Sir, certainly we do want that position reversed so far as our country is concerned; we are thinking in terms of a free India and one of the concomitants of a free India is a Supreme Court in this country.

I have not reflected on the Privy Council at all. I know, Sir, the valuable work that the Privy Council has done but why has Australia or why has Canada dispensed in most cases with appeals to the Privy Council? Why has Ireland abolished the right of appeal to the Privy Council? Why does not the Honourable Mr. Richardson go and preach to Mr. DeValera, "Oh, please don't abolish these appeals to the Privy Council"? He can take the line he has taken because India is a subordinate country and therefore India must not have an independent judicial system also. I ask him: "What about South Africa"? Dare he preach what he has preached here in South Africa? Dare he say, "Because I have come and settled in this country and I have no confidence in the Dutch Judges, South Africa must not curtail the right of appeal to the Privy Council." The argument has been put forward because the British commercial community has been taught to believe, as other minorities have been taught to believe by the British Government of this country, that their interests are supreme with them. Sir, I venture to assert that Indian commercial opinion is behind this Resolution, that Indian landed interests are behind this Resolution, that the tiller of the soil is behind this Resolution. He wants expeditious justice and he wants justice which he can have at a cost which he can bear.

Sir, from the Honourable Mr. Richardson I shall turn to my friend the Honourable Sir A. P. Patro. Sir A. P. Patro was a distinguished member of all the three Round Table Conferences and he was one of the select few who were invited to the Committee to assist the Joint Select Committee. Now, Sir, I should have expected greater knowledge from him of what a Federation is. I am myself a believer in the Federation idea and therefore I cannot agree with my friend the Honourable Sir A. P. Patro. I want—I will not say a united India—I want a greater India, an India in which the Indian States will also come in. Mr. Padshah wants to divide. But I am thinking of Sir A. P. Patro. He was at one time a great supporter of the Federal scheme. He says it was a mistake to usher in the Federal Court at all. It shows that he has no knowledge, if I may say so without disrespect, of what a Federation is or what the Federal Court is intended to be. The Federal Court was a necessary concomitant of provincial autonomy. If you are going to give to the provinces certain sovereign powers, and if you are going to give the centre certain sovereign powers, disputes will arise as to whether a particular question is within the sphere of the province or of the centre. The Federal Court has given some very valuable judgments. You had the excise case, you had the Cantonment case. How could these cases have been decided without the

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machinery of a Federal Court ? You cannot have a federation for all British India and Indian States without a Federal Court. Either these provinces were autonomous or they were not autonomous. If these provinces were autonomous, surely they needed a machinery whereby matters between them and the centre could be settled ? I, therefore, do not blame the Government of India for having introduced this feature of the scheme into our constitution. The Federal Court was a necessary concomitant of provincial autonomy and I am rather surprised that Sir A. P. Patro overlooked this consideration. He says, "The Federal Court has no function ; abolish the Federal Court". Of course, he would abolish provincial autonomy ; he would abolish everything. He would not have responsibility at the Centre——

THE HONOURABLE SIR A. P. PARTO : I would abolish my Honourable friend there. It is too much for him to talk in that strain, Sir.

THE HONOURABLE THE CHAIRMAN (The Honourable Sir David Devadoss) : No personalities, please.

THE HONOURABLE MR. P. N. SAPRU : So, the point of view of Sir A. P. Patro does not appeal to me and I do not think I need consider him at any greater length.

I come now to the Honourable Mr. Padshah. He says that my Resolution is defective as it makes no reference to a Court of Criminal Appeal. He says he is in favour of a Court of Criminal Appeal. I do not know whether a Court of Criminal Appeal is necessary or not. But he has no reason for denying support to the limited proposition enunciated in this Resolution. True, I have not asked for the jurisdiction of the Federal Court to be extended to criminal cases. The real reason for his opposition is that he is a believer in Pakistan and he wants the whole country to be divided into small States——

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : Not small ; two big parts.

THE HONOURABLE MR. P. N. SAPRU : There is a vital difference of opinion on that point between him and me. I do not think that even the expansion of the jurisdiction of the Federal Court will affect his scheme in any way. But, so far as that scheme is concerned, we are determined to fight it, whatever the cost. We can never have any settlement on the basis of a divided India with our Moslem friends. I wanted to say this, because I think the communal issue was unnecessarily dragged in by my very moderate and respected friend the Honourable Mr. Padshah.

Sir, I quite appreciate the difficulties of the Honourable Mr. Conran-Smith. He has told us that he is in communication with the Secretary of State and he cannot at this stage commit Government to one position or the other. If he will give me an assurance that he will communicate this debate to the Secretary of State, I shall be prepared to withdraw my Resolution.

THE HONOURABLE MR. E. CONRAN-SMITH Sir, I gladly give the assurance which the Honourable Member desires.

THE HONOURABLE MR. P. N. SAPRU : I beg leave, then, to withdraw my Resolution, Sir.

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

THE HONOURABLE THE CHAIRMAN (The Honourable Sir David Devadoss): Honourable Members, before I adjourn the House, I wish to observe that the Chair associates itself with all that has been said in regard to the lamented demise of Sir Shah Suleiman. In his death the country has lost a very able and upright judge and a very great scientist.

The Council then adjourned till Eleven of the Clock on Monday, the 24th March, 1941.
