Friday,
9th January, 1914

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. LII

April 1913 - March 1914

ABSTRACT OF PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

From April 1913 to March 1914.

VOL. LII.

Published by Authority of Governor General.

DELHI
SUPERINTENDENT GOVERNMENT PRINTING, INDIA.
1914

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE INDIA COUNCILS ACTS, 1861 to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c 14, AND 9 Edw. VII, c. 4).

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on Friday, the 9th January, 1914.

PRESENT:

The Hon'ble SIR HARCOURT BUTLER, K.C.S.I., C.I.E., Vice-President, *presiding*, and 58 Members, of whom 50 were Additional Members.

DEATH OF SIR JOHN MOLESWORTH MACPHERSON, KT., C.S.I.

The Hon'ble Sir Harcourt Butler said:—

"His Excellency the Viceroy has requested me, before we commence our proceedings to-day, to convey to the Council the deep regret with which he has heard of the untimely and sudden death of Sir John Molesworth Macpherson. On behalf of the Council I desire to associate ourselves with this regret. No man has done more for this Council than the deceased. In the long and laborious proceedings out of which the enlarged Councils arose no man played a more useful or prominent part. He was the first member of the revised Council to take the oath and his signature heads the register in which all members of the Council have subscribed their names. There are still some of us who have benefited by Sir John Molesworth Macpherson's kindness. He was ever ready to help and to suggest ways out of difficulties. His long experience in the Legislative Department of the Government of India, his knowledge of drafting, his unrivalled acquaintance with the Statute-book, gave his advice great weight and value. He was at once one of the most industrious and patient of men and at the same time inspired by high ideals of work and duty. He placed his ability at the service of the

tate in full and ungrudging measure and he earned the respect of successive Viceroys and Law Members of Council, no less than of the Departments of the Government of India and the public. He carried with him into retirement honours and the hopes of all for long life and prosperity. Some of us still remember the eloquent words in which the Viceroy then paid tribute to his work. He dies as he had lived, in harness, for he was engaged in the monumental work of consolidating the statutes of India. This is not the place to dwell at length on those personal qualities which endeared him to a large circle of friends—his kindliness, his courtesy, his sympathy, his philanthropy. But in a land where all religions seem to be at home, I may note that he earned the respect of all as a deeply religious man. I know that I am expressing what you all feel when I take this opportunity of conveying to the relatives of the deceased an expression of our regret for his death, our respect for his memory and our sympathy with them in their bereavement."

The Hon'ble Sir Gangadhar Chitnavis said:—"Sir, as the oldest non-official member of this Council, I beg to associate myself with the remarks that have just fallen from you. It is with deep regret and sorrow that we have heard of the sudden death of our old friend, Sir Molesworth Macpherson, late Legislative Secretary to the Government of India. Those of us who came into contact with him cannot forget the urbanity, the unfailing courtesy and the thoughtfulness that marked his relations with us. Few could resist the magnetism of his genial presence; everybody felt attracted towards him as if by bonds of personal friendship. Sir, Sir John was a lawyer, and had the instincts of an honourable member of the English bar. The enactments of his time bear unmistakable evidence of his careful drafting. His personal relations with Hon'ble Members were cordial, so much so that they felt impelled to show him their sense of genuine appreciation at the time of his retirement. Little did we suspect then that his end was near. But although he is dead, his good work will remain, and he will be long remembered by the Members of this Council."

QUESTIONS AND ANSWERS.

The Hon'ble Raja Kushal Pal Singh asked:—

Relief to a revenue-payer when holding deteriorates during currency of settlement.

1. "Will the Government be pleased to state whether, when a holding deteriorates during the currency of a settlement, owing to such causes as a diluvial deposit of sand, the spread of salts or of weeds difficult to eradicate, water-logging, or the failure of natural irrigation, relief is given to the individual revenue-payer, by an abatement of his land revenue? If so, have Local Governments been asked to explain what arrangements exist for promptly giving such relief, and will the Government be pleased to lay on the table the replies, if any, received from the Local Governments?"

The Hon'ble Sir Robert Carlyle replied:—

"I lay on the table a copy of extracts* from official correspondence which gives the information for which the Hon'ble Member asks."

The Hon'ble Raja Kushal Pal Singh asked:—

Railway lines and number of wagons constructed during preceding 5 years to carry grain and fodder to famine-stricken districts.

2. "Has the attention of the Government been drawn to paragraphs 223 and 224 of the Report of the Famine Commission of 1901? Will the Government be pleased to lay on the table a statement showing the names of the railway lines, and the number of the wagons that have been constructed by them, during the last five years, to carry grain and fodder to famine-stricken districts?"

* *Vide* Appendix A.

The Hon'ble Sir T. R. Wynne replied:—

"The Government of India are aware of the contents of the Report of the Famine Commission of 1901.

"No vehicles are specially constructed for carrying famine traffic, as every kind of vehicle that can be utilised for carrying purposes is brought into service, if necessary.

"A statement* showing the total number of all descriptions of goods vehicles added to the stock of Indian Railways during the last six years and the number now under supply is placed on the table. Including both the wagons added and those contracted for and now under supply, the statement shows an increase of rolling stock of close on 50,000 broad gauge wagons and more than 12,000 metre gauge wagons during the last six years. These figures, however, do not represent in full the increase in the carrying capacity of railways, which cannot be arrived at by simply considering the number of additional vehicles added. During recent years great progress has been made in the provision of more powerful locomotives and in increasing the carrying capacity of wagons, so that the increase in the carrying capacity of railways at the end of 1913 as compared with 1907 is much greater than that shown by the bare increase in the number of wagons."

The Hon'ble Raja Kushal Pal Singh asked:—

3. "Will the Government be pleased to state whether they propose to consider the desirability of creating a reserve of the rolling stock referred to in paragraph 225 of the Report of the Famine Commission of 1901?" **Creation of a reserve of rolling stock.**

The Hon'ble Sir T. R. Wynne replied:—

"The recommendations of the Famine Commission of 1901 with regard to the creation of a reserve of rolling stock received due consideration of the Government of India in that year. They came to the conclusion that the difficulties which were experienced in the famine of 1899-1900 were not to be overcome by the creation of a reserve, but on the contrary that such a reserve might lead to a false sense of security against future shortage of stock. Steps were then being taken to augment largely the stock on the principal railways of India, and it was decided not to lock up additional money in the shape of reserve stock which might not be required in ordinary times.

"The question of the creation of a reserve of rolling stock was revived in 1907, but it was decided that the best policy to adopt was to spend the funds available in increasing the carrying capacity of railways by improving the existing open lines so as to enable the existing stock and new stock to be worked to better advantage.

"The Government of India do not propose to take into consideration again at present the desirability of creating a reserve stock for Indian Railways."

The Hon'ble Raja Kushal Pal Singh asked:—

4. "Has the attention of the Government been drawn to paragraph 219 of the Report of the Famine Commission of 1901? Will the Government be pleased to state what measure, if any, has been taken in the various major provinces for the storage of hay in the manner referred to in the above paragraph?" **Storage of hay.**

The Hon'ble Sir Robert Carlyle replied:—

"The answer to the first sentence of the Hon'ble Member's question is in the affirmative."

"The information asked for in the second part of the question has been called for and will be laid upon the table when it is received."

---

* *Vide* Appendix B.

The Hon'ble Raja Kushal Pal Singh asked :—

Under-payment of village officers and their resort to corrupt practices.

5. "Has the attention of the Government been drawn to paragraph 723 of the Report of the Royal Commission upon Decentralization in India? Will the Government be pleased to state what action they propose to take in the matter?"

The Hon'ble Sir Robert Carlyle replied :—

"The answer to the first part of the question is in the affirmative. The Government of India have already drawn the attention of the Local Governments to the chapter of the Report in which this paragraph occurs and they do not propose to take further action in the matter."

The Hon'ble Raja Kushal Pal Singh asked :—

Levy by District Boards of special taxation for local railway development.

6. "Has the attention of the Government been drawn to paragraph 765 of the Report of the Royal Commission upon Decentralization in India?

"Will the Government be pleased to state whether it is a fact that the Government have under consideration a proposal that District Boards in provinces other than Madras should be empowered to levy a special taxation for local railway development?

"Will the Government be pleased to state when they will announce their decision?"

The Hon'ble Sir Harcourt Butler replied :—

"The Secretary of State, on the recommendation of the Government of India, has sanctioned a proposal that Local Governments other than Madras should, if they wish, be empowered by legislation to authorise District Boards subject to the conditions similar to those laid down in the Madras Local Boards Act, 1884 (V of 1884), to levy a special extra land cess not exceeding three pies in the rupee on the annual rent value of land for the development of light local railways and tramways."

The Hon'ble Raja Kushal Pal Singh asked :—

Appointment of Boards of Visitors for educational institutions.

7. "Will the Government be pleased to state how far the recommendations of the Royal Commission on Decentralization in India regarding the appointment of Boards of Visitors for educational institutions, has been carried out in various provinces in India?"

The Hon'ble Sir Harcourt Butler replied :—

"The recommendation of the Royal Commission on Decentralization was referred to Local Governments, whose replies indicate that there are Managing Committees for Colleges and High Schools in a majority of the provinces and that visiting committees are not required in addition to these. From the last quinquennial report from Bengal, it appears that visiting committees were constituted in 1903, and have been of but little practical use in three divisions, while no opinion is expressed regarding their working in two other divisions."

The Hon'ble Raja Kushal Pal Singh asked :—

Submission of Settlement Officers' preliminary proposals and final reports in respect of land revenue assessment through Collectors.

8. "Has the attention of the Government been drawn to paragraph 564 of the Report of the Royal Commission upon Decentralization in India? Will the Government be pleased to state whether Settlement Officers' preliminary proposals and final reports of assessment are submitted through the Collectors of the districts? If not, do the Government propose to issue orders directing that this procedure should be adopted?"

[9TH JANUARY, 1914.] [*Sir Robert Carlyle; Raja Kushal Pal Singh; Mr. Abbott; Commander-in-Chief; Mir Asad Ali; Sir Reginald Craddock.*]

The Hon'ble Sir Robert Carlyle replied :—

"The reply to the first part of the question is in the affirmative. As regards the second part of the question, the Government of India have decided to leave the matter to the discretion of Local Governments and they do not therefore propose to issue any orders on the subject."

The Hon'ble Raja Kushal Pal Singh asked :—

9. "Has the attention of the Government been drawn to paragraph 251 of the Report of the Royal Commission upon Decentralization in India? Have any definite rules limiting the amount of increase in assessment of land revenue been issued? If not, do the Government propose to issue any such rules?" **Limitation of the amount of increase in assessment at fresh settlement.**

The Hon'ble Sir Robert Carlyle replied :—

"The question is still under the consideration of the Government of India."

The Hon'ble Raja Kushal Pal Singh asked :—

10. "Has the attention of the Government been drawn to paragraph 252 of the Report of the Royal Commission upon Decentralization in India? Do the Government propose to consider the desirability of giving effect to this recommendation?" **Embodiment of general principles of assessment in Provincial legislation.**

The Hon'ble Sir Robert Carlyle replied :—

"The reply to the first part of the question is in the affirmative. As regards the second part the Hon'ble Member is referred to the reply to a similar question put by the Hon'ble Mr. Subba Rao at the Council Meeting held on 24th March, 1911."

The Hon'ble Mr. Abbott asked :—

11. "Does Government propose to lay on the table a detailed report of the proceedings of the Committee which sat in July, 1912, to consider the matter of raising Anglo-Indian Regiments?" **Anglo-Indian Regiment.**

His Excellency the Commander-in-Chief replied :—

"The proceedings of the Committee referred to by the Hon'ble Member are being considered by the Government of India in conjunction with the proceedings of the Army in India Committee."

"These recommendations will in due course be referred to the Secretary of State, pending whose decision it is impossible to lay the proceedings on the table."

The Hon'ble Mir Asad Ali asked :—

12. "With reference to my question regarding non-official representation in Legislative Councils of cantonment stations, such as Bangalore and Secunderabad, will Government be pleased to say whether they propose to consider the advisability of including in the general electoral rolls of the Imperial and Provincial Legislative Councils for the Madras Presidency the names of persons in those stations possessing qualifications similar to those prescribed for voters of the electorates concerned?" **Non-official representation of cantonment stations in Legislative Councils.**

The Hon'ble Sir Reginald Craddock replied :—

"Government do not propose a change in the direction concerned."

THE DESTRUCTIVE INSECTS AND PESTS BILL, 1913.

The Hon'ble Sir Robert Carlyle moved that the Bill to prevent the introduction into British India of any insect, fungus or other pest, which is or may be destructive to crops be referred to a Select Committee consisting of the Hon'ble Sir Ali Imam, the Hon'ble Maung Mye, the Hon'ble Mr. Arthur, the Hon'ble Sir Fazulbhoy Currimbhoy, the Hon'ble Mir Asad Ali, the Hon'ble Mr. Enthoven, the Hon'ble Maharaja Ranajit Sinha, the Hon'ble Sir Edward Maclagan, the Hon'ble Mr. Wynch, the Hon'ble Mr. MacKenna, the Hon'ble Mr. Donald and the mover.

He said :—"The Bill was introduced on the 9th September and published in the *Gazette of India* of September 18th. We have received no suggestions from any other source and we are moving the further introduction of the Bill."

The motion was put and agreed to.

THE INDIAN MOTOR VEHICLES BILL.

The Hon'ble Sir Reginald Craddock moved that the Bill to consolidate and amend the law relating to Motor Vehicles in British India be referred to a Select Committee consisting of the Hon'ble Sir Ali Imam, the Hon'ble Maharaj-Kumar Gopal Saran Singh, the Hon'ble Mr. Monteath, the Hon'ble Mr. Arthur, the Hon'ble Mr. Arbuthnott, the Hon'ble Sardar Daljit Singh, the Hon'ble Mr Pandit, the Hon'ble Mir Asad Ali, the Hon'ble Sir William Vincent, the Hon'ble Mr. Wheeler, the Hon'ble Maharaja Manindra Nandi, the Hon'ble Raja Kushal Pal Singh, the Hon'ble Mr. Cobb, the Hon'ble Mr. Rice and the mover.

The motion was put and agreed to.

THE LOCAL AUTHORITIES LOANS BILL.

The Hon'ble Sir William Meyer said :—"Mr. Vice-President, I beg to move for leave to introduce a Bill to consolidate and amend the law relating to the grant of loans to local authorities.

"The specific amendments which it is proposed to effect, and which are detailed in the Statement of Objects and Reasons, do not involve any important question of principle, and, so far as they are concerned, the Bill is merely one of those measures which are from time to time found necessary when the original legislation was effected a considerable number of years ago—in this case a generation has passed since Act XI of 1879 was framed. When, however, these amendments were under consideration, it appeared to us that the present would be a good opportunity for effecting a consolidation of the whole law relating to the raising of loans by local authorities. At present that law is contained in no fewer than 8 Statutes, and the consolidation of these as now effected by the Legislative Department will, I think, be a great convenience for all those who may have occasion to consult the law on the subject. The side-references in the Bill will enable the source or sources of each of its clauses to be readily traced. I have nothing further to add to what is said in the Statement of Objects and Reasons, except that I should like to emphasize the fact that the borrowing powers at present possessed by large Corporations, such as the Presidency Municipalities, Port Trusts, etc., under their own special enactments, are in no way affected by the present Bill."

The motion was put and agreed to.

[9TH JANUARY, 1914.] [*Sir William Meyer; Mr. Banerjee.*]

The Hon'ble Sir William Meyer introduced the Bill and moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in English in the *Gazette of India* and in the local official Gazettes.

The motion was put and agreed to.

RESOLUTION FOR AMENDMENT OF THE PRESS ACT.

The Hon'ble Mr. Banerjee said:—"Sir, my Resolution refers to the Press Act of 1910 known as Act I of that year. I have no desire to revive the memories of a controversy now passed and I hope forgotten, but it is useless to disguise the fact that the Bill was passed amid some opposition in this Council and considerable opposition in the country. Reading through the reports of the debate which took place in February, 1910, I find that there was a general desire evinced by the non-official Indian Members that it should be a temporary measure and should not find a place among the permanent statutes of the land. That view, however, did not commend itself to the majority and the Act has been added to the stock of our permanent legislation. Sir, the Act has now been in operation for a period close upon four years, and we are in a position to judge of its character. How it has worked, what are its defects and how they may be remedied—these seem to me, Sir, to be pertinent and relevant issues. They force upon our minds the conviction that the Act should be repealed, or, at any rate, should be modified, and that, if it is to be modified, it should be at least upon the lines of the suggestions contained in my Resolution. That, Sir, represents what I may describe as the 'irreducible minimum' which the opinion of the educated community demands, as the first definite step towards what they hope will lead to the final annulment of this Act. Sir, that this Act is bound to be repealed sooner or later—sooner I hope than later—is as clear as the noon-day sun; for it is inconsistent with the great traditions of British rule and those noble principles of government which are incarnated in British administration. No concession to popular freedom has been made by the British Government in India which has ever been withdrawn. The Jury Notification was cancelled; the Vernacular Press Act was repealed; and so will it be with this Act in the fulness of time. I submit, Sir, that the Government of India, standing at the head of the nation, becoming every day more and more nationalistic in its views by the breadth and liberality of its policy, ought to show us the way. Sir, the Act gives very large powers to the police. Under the provisions of section 8 of the Act, the magistrate is empowered to ask the publisher or printer of a newspaper, when he applies for registration, to find security. This power is exercised practically by the police. The magistrate in this case is the police and the police is the Criminal Investigation Department. Only the other day, in the case of the *Habul Matin*, a Persian journal published in Calcutta, it was not the Local Government but the magistrate which demanded security at the instance of the Commissioner of Police. That surely was not the intention of the original framers of the Act. The interposition of the magistrate meant the exercise of judicial discretion and was intended to be a safeguard against the aberrations of executive authority. One of the greatest anomalies of the Act is that whereas a right is given to the aggrieved party to make an appeal against an order of forfeiture, no such right is allowed when the order for deposit of security is given, and the High Court has recently held in the case to which I have referred that even its revisional powers are not available in a case of this kind. Sir, thus in the absence of any safeguard of this kind, the result has been that many newspapers which were called upon to find security have ceased publication. I hold in my hand a statement giving the names of some of the newspapers thus dealt with. I find that 17 newspapers were asked to give security. Of these 3 were Hindu papers and 14 Muhammadan; and not having been able to give security, they all ceased publication. The case of one of these papers, the *Ahli Hadis* of Amritsar, is very peculiar. It published a

letter replying to certain strictures which had appeared in a Missionary organ reflecting upon the Muhammadan faith. This newspaper was asked to furnish security, but it does not appear that the book which published the strictures upon the Muhammadan faith was at all taken notice of. Then, Sir, passing from the papers which ceased to exist, we have a number of those which gave the security. The number according to the list which I have in my hand is 15—9 Muhammadan, 4 Hindu, 1 Sikh and 1 Anglo-Indian. The case of the *Zamindar* of Lahore calls for notice. It has been required to give security to the extent of Rs. 10,000. The head and front of its offence was that it protested against the removal of a mosque. The justice of the complaint was admitted; the mosque was restored; but in consequence of certain remarks which it made against the respected head of the Government of the United Provinces, the paper was asked to give a security of Rs. 10,000. I will say this at once, that I have seen these remarks; I deplore them; I consider them to be very discourteous, very disrespectful, very objectionable; but at the same time, it seems to me that it would have been quite worthy of a great Government, if, instead of demanding security to the extent of Rs. 10,000, the Editor was sent for and sharply reprimanded. There is one other case to which I want to refer. Amongst those that were required to give security, there was an Anglo-Indian newspaper named the *Cawnpore Herald*. Somewhere about the year 1912 an article called 'A Dramatic Scene' appeared in that paper. The Deputy Superintendent of Police called upon the proprietress of the paper, and wanted to know who the writer was. Naturally enough, she declined to give the name. Then she called on the magistrate; the magistrate said that it was very improper on her part to permit her newspaper to be the means of criticism directed against the police and the municipality, and that she had no business to have the press moved about from place to place. The upshot of it all was that she was required to find security to the extent of Rs. 500. She submitted a memorial to the Government of India somewhere about the year 1912. My information is that up to this time, she has not received any reply of any kind.

"Passing from these cases, let me note the vigour with which the Act has been worked under the different Governments. Through the courtesy of my hon'ble friend, the Home Secretary, I have been furnished with a statement. I find from it that for the three years during which the Act has been in operation, there have been 807 cases altogether dealt with under the Act. Of these, 239 were cases under sections 3 and 8, in which deposit of security was required; and the other cases were under section 12, in which certain publications and pamphlets were declared to be forfeited. If we take the figure 807 for three years, it comes to this, that there was an action taken almost every day of the year. This seems to me to indicate very great vigour on the part of the different departments superintending the operation of this Act. All this indicates the urgent need there is for the supervision of public opinion over the operation of this Act.

"Passing from facts, let me come to the authoritative expression of opinion. I will not refer to the popular verdict, for that may not commend itself to gentlemen on the other side of the House; but I will cite an authority of unquestioned weight, whose pronouncement, I am sure, will command the implicit acquiescence of all members, be they official or non-official. Let me quote the opinion of the Chief Justice of the High Court of Bengal when delivering judgment in the *Comrade* case. This is what Sir Lawrence Jenkins said:—

'The provisions of section 4 are very comprehensive, and its language is as wide as human ingenuity could make it. Indeed, it appears to me to embrace the whole range of varying degrees of assurance from certainty on the one side to the very limits of impossibility on the other. It is difficult to see to what lengths the operation of this section may not plausibly be extended by an ingenious mind. They would certainly extend to writings that may even command approval. An attack on that degraded section of the public which lives on the misery and shame of others would come within this widespread net, the praise of a class might not be free from the risk. Much that is regarded as standard literature could undoubtedly be caught.'

"That is the Chief Justice's opinion about section 4 of the Act. Sir, my Resolution does not cover it at all. It is a very modest one. I ask, Is it possible to conceive of a condemnation of any measure more restrained in its

tone yet more emphatic in its reference? A law so dangerously comprehensive in its scope, naturally needs many safeguards for its proper working. The Government of India recognised the necessity of such safeguards and wisely provided them. The Hon'ble Mr. Sinha, late Law Member to the Government of India, speaking from his place in this Council, speaking on behalf of the Government of India, referred to these safeguards in clear and explicit terms. I will read an extract from his speech. He said :—

'It is of no use to attempt to convince us that it is a very drastic measure, because we have put in all kinds of safeguards. I will mention another which my Hon'ble friends seem to have forgotten in their hasty perusal of the Bill. When the Local Government makes the order of forfeiture the Bill provides that it must state or describe the offending words, or articles, or pictures, or engravings, or whatever it is, upon which it bases its order. No making an order which is vague, which is indefinite. No order without allowing the man to know what he is being punished for, but a definite order stating the very words of the article or describing it as that which the man is being punished for. Is that not a safeguard? Apart from the Tribunal of Appeal, is it not a safeguard to provide that a man will not have his security forfeited without being told exactly what he has written that is taken exception to.'

"I think, Sir, there could not be a clearer exposition of the intentions of the Government in regard to this matter, and I understand that Mr. Sinha's speech on that occasion was endorsed whole-heartedly by the then Viceroy, Lord Minto. The question is whether these safeguards have been effectually provided, whether the promises then made have been redeemed. Let us examine the matter a little. Section 4 of the Act lays down that when a Local Government has decided to forfeit any deposit in respect of a printing press, it has to issue a notice in writing stating the grounds of the forfeiture—the words, signs, visible representations, to which exception is taken. Section 6 lays down that when a deposit has been forfeited and a fresh deposit has been made and the Government decides again to forfeit the deposit in consequence of the contravention of the terms of section 4, a notice is to be issued in writing again stating the grounds for the forfeiture. This is as regards printing presses. The same provisions *mutatis mutandis* apply to newspapers. Therefore it comes to this, that wherever a Local Government is invested with the right to forfeit a newspaper or a printing press, the obligation is cast on the Government to state the grounds for the forfeiture. But, Sir, unfortunately, all this is annulled by the provisions of section 22; that at any rate is the opinion of the High Court. It is necessary for me to read section 22. That section declares :—

'Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on such application as aforesaid, and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.'

"This is the opinion of the Chief Justice in regard to this section :—

'The notification therefore appears to me to be defective in a material particular and, but for section 22 of the Act, it would, in my opinion, be our duty to hold that there had been no legal forfeiture.

'That section, however, provides that every declaration purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place. The result is that though I hold that the notification does not comply with the provisions of the Act, still we are, in my opinion, barred from questioning the legality of the forfeiture it purports to declare.'

"Is it possible to hold in the face of this clear expression of opinion that the safeguards which were promised by the Hon'ble Mr. Sinha have been provided? Be it observed that these pledges were given in order to allay the great public excitement that was caused by the enactment of so drastic a law as the Press Act. What was given with the one hand is practically taken away with the other. This was not, this could not have been, the intention of the Government of India, for apart from its high-mindedness, and even its sternest critics must give it credit for that, there is internal evidence to show the anxiety of the Government of India to incorporate in the Act the declaration of Mr. Sinha; and section after section reproduces the safeguards promised by him. But all of a sudden they are nullified by the provisions of section 22. It seems to me

that there must have been some error, some mistake in the drafting. I am confirmed in this view by an examination of the Act. Section 17 gives the aggrieved party a right of appeal to the High Court; that however becomes nugatory and meaningless if the aggrieved party is not furnished with materials on which the High Court is to form its judgment, or the High Court is barred from considering these materials for the purposes of reviewing the decision of the executive authority concerned. It is preposterous to suppose that the Act deliberately nullifies in one part what it has deliberately conceded in another, or that it has thrown an impossible burden of proof upon the aggrieved party. I will quote the opinion of the Hon'ble the Chief Justice :—

'The Advocate General has admitted, and I think very properly, that the pamphlet (that is the 'Comrade') is not seditious and does not offend against any provision of the criminal law of India. But he has contended, and rightly in my opinion, that the provisions of the Press Act extend far beyond the criminal law; and he has argued that the burden of proof is cast on the applicant, so that, however meritorious the pamphlet may be, still, if the applicant cannot establish the negative the Act requires, his application must fail.

'And what is this negative? It is not enough for the applicant to show that the words of the pamphlet are not likely to bring into hatred or contempt any class or section of His Majesty's subjects in British India, or that they have not a tendency in fact to bring about that result. But he must go further, and show that it is impossible for them to have that tendency either directly or indirectly, and whether by way of inference, suggestion, allusion, metaphor or implication.'

"Well, Sir, it is impossible for any person to prove a negative, and the difficulty of the task is enhanced by the comprehensive nature of the obligation of proof that is cast upon him.

"The second part of my Resolution follows as a matter of course from the first. It is no use placing materials before the High Court for a review, if the High Court is debarred from considering these materials. The High Court says that it is debarred. Therefore I submit that section 22 ought to be amended in order definitely to empower the High Court to set aside any order not made in conformity with the provisions of sections 4, 6, 9, 11 and 12. It may perhaps be held that the first portion of the Resolution is a surplusage, that it is already the law, and that therefore no amendment is necessary. If this contention holds good, it constitutes an overwhelming argument in favour of the amendment of section 22 in accordance with my suggestion. If it is already provided in the Act that the grounds of the forfeiture must be set forth in the notes of forfeiture, you are bound to make the law operative and to give it effect. Therefore you must modify section 22 upon the lines suggested by me.

"Sir, it is admitted on all hands that there has been a sensible improvement in the situation; the highest authorities in the realm have borne testimony to this effect. It is also admitted that there has been a change for the better in the tone and temper of the press. Our critics hostile to our interests and aspirations have ungrudgingly admitted the fact; that being so, I feel that I should be justified in demanding the repeal or, at any rate, a substantial modification of the Act, but I go no further than to invite the Council so to amend the Act as to remove a just cause for complaint, to carry out its declared intentions and to redeem the pledged word of the Government. In making this appeal I speak not only as a Member of this Council but as one with whom journalism has been the cherished vocation of his life. We journalists feel as if the sword of Damocles was hanging over our heads. We may be right or we may be wrong, but that is our feeling. Ours is a noble calling and we are entitled to the whole-hearted support and sympathy of the Government. The newspaper press is the great organ for the ventilation of popular grievances, it is the safety-valve of the State, it is an instrument of popular and political education, it is the gift of British rule and we cherish it with affectionate ardour. Its liberty may degenerate into licence, but I venture to hold that the arm of the law, such as it is without being reinforced by the Press Act, is long enough to reach it and strong enough to deal with it. The amendment of the Press Act which I pray for—and after all it is not an amendment but is in entire conformity with the intentions of the framers of the Act—will, if accepted,

go some way to soften the rigours of the law and remove a just source of anxiety and of uneasiness felt by the great body of Indian journalists, and above all, Sir, it will proclaim to the world the unalterable determination of the Government to redeem its pledged word and to make justice to the aggrieved party the keynote of its policy, even when enforcing a measure of some severity, deemed necessary by the Government in the supreme interests of the State.

"With these words, Sir, I beg to move the Resolution that stands against my name, namely:—

That this Council recommends to the Governor General in Council that an amendment of the Press Act of 1910 be introduced in the Imperial Legislative Council so as to provide that when any order of forfeiture is made under the Act, the order must state or describe the offending words or articles or pictures or engravings or whatever it is upon which the Local Government bases its order, and that section 22 of the Act be so modified as to definitely empower the High Court to set aside an order of forfeiture not made in conformity with the provisions of sections 4, 6, 9, 11 and 12 of the Act.

The Hon'ble Malik Umar Hyat Khan said:—"Sir, I am the greatest enemy of the seditious Press and had I had the power, I would have never allowed this resolution to be moved and discussed here to-day, or, I would have asked to move a counter-resolution for making the Press Act more stringent than it is now. On the 6th instant, I spoke on this subject and I also emphasised the necessity of making this law more effective in my last year's Budget Speech when there were no signs of this resolution being discussed here. An unbridled Press is the greatest curse of India, and, there has never been a more appropriate and more useful Act passed in this Council than the Press Act with the exception of two others—the Seditious Meetings Act and the Conspiracy Act—which constitute its part and parcel and which are calculated to strike a blow at and suppress anarchism and seditious propaganda organised or unorganised. I think that it is the seditious Press which lies at the root of the other two. It is papers or other seditious pamphlets which poison unsteady persons and result in engendering in their minds either conspiracy or an uncontrollable excitement. I need hardly mention the history of the time when the late lamented Sir Herbert Risley made his masterly speech enumerating various anarchical deeds which were committed, showing thereby urgent necessity of a new remedy against the outbreak of crime which had then taken place. There has not been a single discussion in this reformed Council on this subject in which I have not taken part because I feel that if such propaganda are not crushed with a strong hand serious danger will result in the future. If anything happens then on a very big scale the peace-loving subjects of His Majesty the King-Emperor would be the real sufferers and the irresponsible small set of sedition-mongers would gain money by setting the house of the poor on fire and witnessing the blaze from afar. I think this crime of seditious writing is far more serious than murder because in the former one kills another for personal grievances while in the latter there is danger of thousands of innocent men being killed who meant no harm to any one. Sedition is sure to set back not only the hands of the clock of advancement in India but it will so shatter the whole machinery as to break it in small bits. One of the political prisoners in Montgomery Jail was asked why he committed the crime. He replied that his mind was upset by reading articles in newspapers and pamphlets which led him to do this. When he was in prison and the whole thing was over he had no motive for saying anything but truth and we can safely hold the press responsible for 97 per cent. of crimes of this nature. We, the representatives of the Punjab, who come from martial classes by which the Punjab is mostly populated and from which a large number of His Majesty's soldiers are drawn, cannot possibly tolerate any weakness in the press as it will be allowing fire to be lit near a tank of petroleum which may be in the house we reside in. It may have been noticed that our worthy Lieutenant-Governor when opening the Punjab Council specially remarked about the mischief caused by presses of a certain class,

[*Malik Umar Hyat Khan; Maharaja Ranajit Sinha of Nashipur.*] [9TH JANUARY, 1914.]

and I am very glad to find that some steps were taken against some newspapers. Although the Punjab Government have determined to put a stop to such presses, yet there has been very little done in view of the leniency of the Press Act as it is in the present form. It hardly stands to reason that the Local Government should have to decide upon specific offending words or articles, etc., as laid down in the resolution, which are seditious. There are many papers in which even one article cannot be determined upon to be seditious. It is the general tone pervading the paper throughout the year which is really responsible for influencing the trend of the mind of its readers against the authorities organised for the establishment of law and order to which we owe all the present progress which would further increase—were all obstacles such as the seditious press removed from the way; and, in my opinion, the declaration made by any Local Government of forfeiture of anything of seditious kind should be conclusive. I have been advocating this cause ever since I had a voice. I first spoke in the Punjab Council before the present law was passed and again in the Imperial Council on various dates, as strongly as words could permit me. I cannot believe any one the real friend of India who exposes the poor peace-loving population, the lambs of India, to the attacks of the wolves of the Press.

"Let us now turn to the other aspect of the question. Has the situation since been improved? The answer is surely and certainly in the negative. The period covering about a year's time, from the Delhi outrage to a recent occurrence at a police station in Bengal, is closely linked together by a series of occurrences, and goes to show that no leniency is required in any way at the present juncture To show weakness at a time when force is demanded would be disastrous and unsound policy. I think the Press Act, as it now stands, is so weak as to be ineffective and unless the general tone of a paper is considered in determining its real character, no satisfactory result would be achieved in the direction of repressing and stamping out crime. It will have been seen how the friends of India were anxious to assist the Government in adequately coping with this wave of undesirable and obnoxious crime when the Conspiracy Bill was put to the vote. The whole Council, official and non-official, were on one side while the Hon'ble Mover of to-day with one faithful follower adhered like heroes to fight to the last when the position was really untenable. I not only oppose this resolution as strongly as it lies in my power, but appeal to the Council that no leniency should be shown by the supreme Council to the disturbers of India's peace. I take this opportunity to urge the Governor-General in Council to make the Press law more stringent and thus more effective With these few remarks I oppose this resolution.

"Sir, I think in every province the Lieutenant-Governor or Local Government is about the highest authority that there is, and perhaps an editor or anyone who writes an article in a newspaper is not even known to him. It is not possible that he would go against the writer unless he finds that he is so dangerous that he is disturbing the peace of the peace-loving population in that province, and we cannot for a moment think that any injustice would be done. The High Court is no doubt a very big court, but at the same time the Lieutenant-Governor of a province is not an ordinary authority, and as he knows about the executive as well as the other side, I think he ought to be the highest authority in the province."

The Hon'ble Maharaja Ranajit Sinha of Nashipur said:—"Sir, we all know under what circumstances the Government had recourse to such a piece of legislation as this in 1910. Mr. Sinha, who was the Law Member then, explained the object for which the Government was forced to bring forward this law and he also explained the situation then existing, which necessitated the introduction of the Press Law which the country opposed very much at the time. Sir, I am not in a position to say that the circumstances have so materially changed that we can safely demand that the law should be

repealed at this moment. We all, especially I, coming from Bengal, cannot say that the circumstances under which this law had to be enacted no longer exist. I think it is not at all safe that the Government should be divested of the powers of complete control over irresponsible writings of the press. I should also think that, as in this country the majority of the people form their opinion upon the writings of the newspapers, so the greatest responsibility lies upon the editors, and if they fail to discharge those duties, the Government should have power to put a stop to those writings.

"At the same time, Sir, I find that my friend does not wish that the law shall be repealed, but he asks for an amendment of certain sections. Under the Act itself the Government, in ordering forfeiture of deposits, is to state and describe the offending words, or articles, or pictures, or whatever it is, upon which the Local Government bases its order of forfeiture. The law already provides for this point and I do not see any reason why an amendment is necessary on that point, but my friend has explained that the Calcutta High Court has ruled that they are debarred from questioning the legality of the order of the Local Government on the point. If such be the case, I think the ambiguity should be removed by an amendment.

"With these few words I beg to support only the latter part of the Resolution of my hon'ble friend on the right."

The Hon'ble Mr. Qumrul Huda said:—"Sir, it must be in the recollection of some of us present here that the Press Bill of 1910 was passed into law under peculiar circumstances. There was agitation in some of the important Provinces of India, and the Press Bill has created a sort of commotion and agitation over the Bill itself within the walls of the Council Chamber. After reading the report of the speeches of that memorable debate on the Bill, one cannot fail to notice that the Government was not unaffected by these agitations. It should be enough to prove the state of mind of the Government that they thought proper to push through the Council and to pass such an important Bill into law within three days. No case was made out for this post haste procedure. Persons possessed with the highest intellect and firmness of mind are liable to lose balance of reasoning when they are in hot haste. With due respect to Sir Herbert Risley, the Honourable Member in charge of the Bill, I may be permitted to say that even a man of his calibre could not prove himself an exception. His chief object appeared to be very careful of the bargain he was making on behalf of the Government. He knew for certain what precious privileges he was taking from the people of India, but he did not seem to care for the words of his promises which he offered to them instead. He was fully aware of the fact that the Press Bill would not leave an atom of the freedom of Press to the people, and so he asked them to console themselves with the check provided in the Bill on the powers of the Local Governments. This check consisted of the right of appeal to the High Court against the order of Local Governments. He assured them of their right of appeal in these words:—

'So far I have dealt only with the powers of the Act. I will now turn to the check I have provided. This consists of an appeal to a special tribunal of three Judges of the High Court against any order of forfeiture passed by the Government. If it appears to the High Court that the matter in respect of which the order was passed does not come within the terms of section 4 of the Bill, then the High Court will set aside the order of forfeiture. I think it will be admitted that this is a very complete check upon any hasty or improper action by a Local Government. We have therefore barred all other legal remedies.'

"It is not difficult to guess that while Sir Herbert was uttering these words he had in his mind sections 18 and 22 of the Press Act. Then this sacred assurance and promise of complete check was endorsed and supported by the Hon'ble Law Member of the time. We believed in, and relied fully and completely on, the words of the responsible officers of the Crown. But when the first appeal under the Act goes to the High Court of Calcutta we, to our amazement and disappointment, are told that the 'complete check' promised to us and

provided in the Act are words without meaning. I need not quote the judgment of the Chief Justice of Bengal, as I presume that his interpretation of the law on the subject must be fresh in the minds of the majority of us in this Council, and some portions of it have just been read to us by the Hon'ble mover of the Resolution. This ruling of the High Court should convince the Government as well, that the check it had placed on the hasty action of the Local Government, proved futile instead of being 'complete' as it was contemplated at the time of passing the Act. The Resolution we are discussing is nothing but a request to the Government to rectify its unintentional error in an Act which was passed in a hurry and under peculiar circumstances. Sir, pray do not give anyone ground to think that the Government can err, that it does not possess courage enough to mend that error. Let it not come into the minds of the people that the Government in its assurances and promises plays upon words.

"Sir, we cannot for a moment suppose that the Government ever says anything to the people it does not mean. When we ask for an amendment of this Press Act, we demand that on the strength of the weighty words of Sir Herbert Risley. It was expected of the Government to come forward ere long, with a Bill to amend the Press Act of 1910. Sir, it was a matter of honour for the Government.

"I think that both the people as well as the Government should be thankful to the Hon'ble Babu Surendra Nath Banerjee for moving this Resolution in the Council. It may remove the grievance of the people, and it has given a chance to the Government to extricate itself from the awkward position it has been placed in. For my own part, while thanking my Hon'ble friend for this Resolution, I cannot help telling him that the scope of it is too limited to remove many other flaws in the Act. With these few remarks I strongly support the Resolution."

The Hon'ble Mr. Rama Rayaningar said:—"Sir, the request embodied in the Resolution appears to be modest and reasonable. If the request were for a repeal of the Press Act, many of us would have no hesitation in saying that it is not yet time for such a request. But, as I understand, the request is to amend the law and to give effect to the express intention of Government. Sir, in the proceedings of this Council relating to the enactment of the Press Law, there is the statement of the then Hon'ble Home Member in charge of the Bill assuring the Council that provision is made in the Act for the right of appeal to the High Court when the order of the Government passed against the accused contravenes section 4 of the Act. The provision in the Act for the right of appeal, in order to be effective as a safeguard, will have to be modified by the amendment now proposed. Hon'ble Members are aware of what the Calcutta High Court said recently in disposing of Mahomed Ali's appeal. In this case, in spite of the fact that there is in the Act provision for the right of appeal, the High Court could not interfere with the order passed by the Government and therefore the appeal had to be dismissed. If the legislature really intended the provision to be effective and the High Court interprets it otherwise, we have to presume that there is some defect in the wording of the Act. And it is proper that this defect should be remedied by an amendment. Of course the defect must have been the result of some mistake. Government, I am sure, will not persist in the mistake when the mistake is pointed out. Persistence in mistake is against the principles of good government and assuredly it is against the enlightened policy of our benign Government. Sir, I therefore support the Resolution and hope that Government will see their way to modify the

wording of the Act so as to bring the law into conformity with the intention as expressed by Sir Herbert Risley in that masterly speech which my friend the Hon'ble Malik Umar Hyat Khan, has just referred to."

The Hon'ble Mr. Das said :—" Sir, the Resolution before the Council seeks an amendment of the Press Act of 1910. That Act was passed under peculiar circumstances. The readings of the political barometer at the time made it necessary. As to whether an amendment is necessary now or not is really the question before the Council. At the time when the Act was passed, the conditions which necessitated the passing of the Act were considered extraordinary, they were considered unusual. An unusual state of things demanded a peculiar piece of legislation suited to the time.

" The figures cited by the Mover of the Resolution show that Government have found it necessary almost every day to exercise the powers reserved to Government under the Act with regard to newspapers only, for the Mover said that he had taken notice of 800 cases within a certain period, which on striking their average, gives more than one case per day. If that be the real state of things, what was considered an abnormal and unusual state of things at the time the Press Act was passed is now actually a normal state of things. On that ground, Sir, I think an amendment of the Act is necessary. If that be the right view, a thing which was considered usual at the time has developed into an evil which is to be permanent amongst us. So an amendment of the Act is necessary on that ground.

" The Hon'ble gentleman who rose immediately after the Mover had sat down, said that he would rather seek an amendment in order to make the provisions of the Act more stringent. Sir, on both sides the necessity of an amendment has been pressed. What really strikes one as a very difficult question—and yet it is a question in which the public are very much interested—is this, namely, whether the Act has been worded so as to give the people an idea as to what it is that is expected of them. The Act was interpreted by the learned Chief Justice of the Calcutta High Court in the case to which reference has been made by the Hon'ble Mover, and the Chief Justice pronounced it as full of ambiguities. I am very glad indeed that the learned Advocate-General, who represented the views of the Crown in that particular case, is present here. I mean the case of Mr. Mahomed Ali with regard to the publication of the pamphlet " Come over to Macedonia and help us "—that was the pamphlet which was being interpreted and discussed before the Chief Justice at the time. The learned Advocate-General then contended, and I have no doubt that his contention represents the views of Government. I have his words here—' the High Court's power of intervention is the narrowest ; its power to pronounce on the legality of the forfeiture by reason of failure to observe the mandatory conditions of the Act is barred.' These are the words which I find in that judgment of the learned Chief Justice, that even in illegalities by reason of failure to observe the mandatory conditions of the Act the High Court's powers are barred.

" Sir, I have always understood that the mandatory conditions of an Act, especially when the conditions are conditions precedent to any action, or to any measure, or to any procedure, are a *sine qua non* to the validity and legality of what follows. But here we have a case where the mandatory conditions have been differently interpreted.

"It is admitted that there are conditions of a mandatory character, and yet it is contended that the High Court's power to pronounce on the legality of the forfeiture, by reason of the failure to observe the mandatory conditions of the Act, is barred. If they are to be at all mandatory conditions, certainly they must be tested by those rules and canons of interpretation which have always been held to be applicable to mandatory conditions in all civilised countries. If we remove from the Act the mandatory conditions (let us suppose for a moment that the mandatory conditions are removed) how does the Act stand? The Government's power is defined in section 4 as—'whenever any printing press is used for the purpose of printing or publishing any newspaper, book or other document, containing any words, signs or visible representations which are likely or may have a tendency directly or indirectly' and so on, 'notice is given to the keeper of such printing press stating or describing the words, signs or visible representations which in its opinion are of the nature described above.' Words to a similar effect recur in sections 9, 10 and 11. These words (if the mandatory conditions be omitted) will not find any place in the Act. What is left in the Act is the power of the Executive Government to order a forfeiture, and that power certainly is of an executive character. No doubt it is absolutely necessary that an Executive Government should possess powers which should stand beyond the power of a judicial court to criticise. If I remember aright the Learned Chief Justice in that very judgment says that the Executive Government may receive information from other sources than are open to the Law Courts, and the Executive Government may be influenced by considerations which do not weigh at all before a High Court. It is quite open to the Executive Government to exercise its executive powers—such powers as it deems necessary for the better administration of the country, for the peace of the country and the preservation of law and order in the country. But at the same time when the Executive Government comes to the Legislative Council and introduces a piece of legislation with a view to arming itself with a power through the instrumentality of the Legislature, certainly that Act which gives the Executive Government its power must be interpreted according to the known rules and canons of interpretation which have been the result of ages of judicial decisions. The executive power of the Government in this case has been derived from a piece of legislation It was quite open to the Government to exercise its power, such as it thought the conditions of the country demanded, without coming to the Legislative Council; but when the Executive Government, which takes the initiative in every piece of legislation, comes to the Legislative Department, and takes its arms from the armoury of legislature then certainly the provisions of the Act which arms the Government with the power must be interpreted according to accepted rules of interpretation and construction. Here we have a piece of legislation where power is given to the High Court to test the legality of an order issued by the Executive Government, and yet we find the Advocate General contending before the High Court that the power of the High Court to pronounce upon the legality of the forfeiture, by reason of the failure to observe the mandatory conditions of the Act, is barred. I know there have been conflicting decisions on this point in the different High Courts, as to whether the High Court has power or not to pronounce on the legality of the action of the Executive Government under this Act. If there has been any conflict of decision, I should say that is an additional reason for an amendment of the Act. As to what should be the

line of amendment it is not for me to suggest. If the Government thinks that it would be justified to reserve to itself absolute power —"

The Hon'ble the Vice-President said :—"I must ask the Hon'ble Member to resume his seat as he has exceeded his time limit."

The Hon'ble Mr. Kenrick said :—" Sir, as a member of the Select Committee on the press legislation of 1910, and as one who has had some practical experience of the working of the Press Act, I desire to offer a few observations in opposition to this Resolution. Every one acquainted with the provisions of the Act must admit, of course, that the Act has placed—and advisedly placed—an extremely effective and powerful weapon in the hands of the Executive. But those who are best informed are aware that this weapon has been wielded, and invariably wielded, with extreme moderation by the Executive in the many cases in which there has been unhappy necessity for using it. During the past four years since the Act has been in force, as was mentioned by the Hon'ble Mover, some 800 publications have been dealt with under the provisions of the Act. But the number of forfeitures—the number of cases in which forfeitures occurred—was comparatively few.

" I may say that many, if not nearly all, of the cases in which publications were forfeited under the provisions of the Act were cases in which the writings were of the most flagrantly revolutionary nature, and it would, at any rate in my view, have been deplorable indeed if the law did not provide some summary and effective means of dealing with such literature.

" The most complete answer to the proposed resolution for the amendment of the Act is the fact that during the whole period in which the Act has been in force for very nearly 4 years—3 years and 10 months as a matter of fact—during the whole of that period and with all the cases in which publications have been forfeited, which have come before the executive authorities and which have been dealt with by them under the Act, only one case (and that is the one to which the Hon'ble Mover has alluded) has been brought up before any of the High Courts in India, so far as I am aware, and in that case the validity of the forfeiture was supported.

" The Hon'ble Mover has urged, no doubt with the best of faith and in the sincerest belief, that the promises of safeguards made by the Hon'ble Mr. Sinha on behalf of the Government when introducing the Bill have not been fulfilled. But the Hon'ble Mover is, as I shall show, mistaken in that respect. It is a fallacious and wholly misleading argument to quote words which were used by the Hon'ble Mr. Sinha when discussing sections of the Act relating to the forfeiture of a printing press and to the forfeiture of security given by the owner of a press ; I say that it is misleading and fallacious to quote those words and to divorce them from their context and impute them to Mr. Sinha as being spoken by him in reference to a different section. By a different section I refer to section 12 which has a different scope, a different object, and a different subject-matter from those sections relating to the forfeiture of the press and forfeiture of security in relation to which the words were spoken. Yet that has been the argument presented to this Council by the Hon'ble Mover. Upon those false premises the charge has been levelled by the Hon'ble Mover against the Government that they have failed to fulfil the promises which were then made on behalf of the Government by the Hon'ble Mr. Sinha."

The Hon'ble Mr. Banerjee said :—"I rise to a point of order. I never charged the Government with having failed to fulfil their promises. What I said was that there was an error in the matter of drafting and I submit that is very different and I beg that the Hon'ble Member will withdraw that remark."

The Hon'ble Mr. Kenrick said :—"The Hon'ble Mover used the expression that 'the Government have failed to fulfil their pledges'."

The Hon'ble Mr. Banerjee said :—"Yes ; but the Hon'ble Member, if you will permit me, Sir, has done exactly what he charges me with having done in respect of Mr. Sinha, divorcing the whole context from that particular

passage. The whole trend of my argument was that a mistake had been committed, and he must not pick out a particular sentence or a particular part of my speech and say that I meant to charge the Government with deliberately breaking its promise."

The Vice-President said:—"Mr. Kenrick is in order and will continue his speech."

The Hon'ble Mr. Kenrick said:—"I say that the Hon'ble Mover did more than suggest, he asserted that the Government had failed to redeem the pledges given on their behalf by the Hon'ble Mr. Sinha in his speech in Council. I say that that charge is without foundation. The safeguards which were promised were incorporated in the Act.

"The proposed resolution asks for legislation to amend the Act by providing that 'when any order of forfeiture is made under the Act, the order must state or describe the offending words, or articles, or pictures, or engravings, or whatever it is, upon which the Local Government bases its order.' That is the first portion of the proposed amendment. But the safeguard which is there asked for is in fact already provided by certain sections of the Act, particularly by section 6 in the case of forfeiture of further security deposited by the proprietor of a press; also in the case of forfeiture of a printing press, and in the case of forfeiture of any publication where further security has been deposited under section 5. In all those cases, section 6 of the Act requires notice to be given in writing, stating the words, signs or visible representations which are held to offend against section 4. Now, those are the safeguards which were specifically referred to by the Hon'ble Mr. Sinha in his speech in Council, and those safeguards have been provided. Precisely similar provisions have been inserted in sections 9 and 11 in cases where the Local Government exercises the power to declare the security deposited by a newspaper publisher forfeited, and also in cases of forfeiture of further security deposited on making a fresh declaration under the Press and Registration of Books Act, 1867. So that in all these various sections, what is now asked for in the proposed amendment is already law. I would ask Hon'ble Members to realise and recollect that.

"There only remains for consideration section 12 of the Act, which presumably was the one to which the Hon'ble Member has directed his attention in the remarks which he addressed to the Council. That, as I have already said, is a section which was passed with a different object, and it contains different subject-matter from that of the preceding sections. Section 12, I would point out to Hon'ble Members who happily are not acquainted in detail with the provisions of this Act, is not concerned in any way with any particular press or with any particular newspaper publishers or with the security given by any owner of a press. This section, section 12, gives power to order forfeiture of publications offending against section 4 wherever those publications are found. The provisions of section 12 meet the case of publications coming into India from abroad, and not only such publications, but publications wherever found the sources of which may be entirely unknown. The object of section 12 is to give power at once to deal with such matter of mischievous and evil tendency; and it follows that section 12 was advisedly drafted differently from the preceding sections I may say, from my recollection of the debate on this Bill in 1910, that this section 12—and I should like to be corrected if I am in error, though my recollection is very clear—was passed without any resolution for amendment being proposed and without any division thereon. That is an important point to be considered and to be kept in mind, and this notwithstanding the fact that Hon'ble Members at the time were fully cognisant that this section differed in language and in the safeguards provided from those sections which were dealing with the forfeiture of a press or the forfeiture of a security given by a newspaper printer or publisher. Section 12 differs from the other sections by merely requiring the Government when forfeiting any publication to notify the grounds of its opinion that the publication contains words or signs of the nature described in section 4."

"Section 4 contains six clauses which prescribe the various grounds on which a publication may be forfeited. These clauses consist of several sub-heads, and if the section is carefully read and analysed it will be seen that there are some thirty grounds on which a publication by means of its criminal and mischievous tendencies may be forfeited. Now, the Government in exercising their power of forfeiture under section 12, has always notified the particular ground in respect of which the matter comes within the section. In the notification of forfeiture of a particular pamphlet or paper it is invariably stated in respect of which particular ground of these thirty in the opinion of the Local Government the document offends. I say that to go further in cases under section 12 and actually to state or describe the offending words or articles in a public notification by Government, and that is what the Hon'ble Mover has urged upon the Council should be done—to state the actual words which formed the subject-matter of the forfeiture, would be merely to emphasize, to extend, to spread broadcast and perpetuate the very evil which section 12 is designed to suppress. It is intended as a summary means, an effective means, of suppressing offensive matter, and when I use the word 'offensive' I use it in the sense of matter which offends against the provisions of section 4, which, as I have said, are comprehensive.

"Now, as to the quotations from the judgment of the Hon'ble and learned Chief Justice of Bengal, while according it the highest respect, I am entitled to say that in so far as the Chief Justice has gone beyond the facts of the particular case that he was deciding, his remarks amount to mere *obiter dicta*. The decision on the case amounts to this, that the forfeiture in the particular instance which was submitted to the Court was valid in law. Anyone whose misfortune it was to examine the proscribed pamphlet in that case, with its gruesome and revolting illustrations, could not have any doubt that the power of forfeiture vested in the Executive was, in that particular instance, properly and wisely exercised in the public interest. Notwithstanding that judgment and its *dicta*, I have no hesitation in expressing this opinion, and I do so with a full sense of responsibility: I say that if for the purpose of argument we assume in any individual instance an arbitrary exercise by the Executive of the powers vested in them by the forfeiture of a publication which all reasonable men would agree in holding to be innocuous, innocent, free from any mischievous tendency, on that assumption and in such a case, the special Bench of the High Court would have full power under section 19 to hold that the publication did not come within the provisions of section 4. I say without doubt that the Court would set aside, and properly set aside, the forfeiture. The provisions contained in section 19 of the Act, therefore, do contain reasonable protection against any arbitrary act of forfeiture under section 12 by the Executive. That no advantage has been taken of these provisions except in one case, and then unsuccessfully, demonstrates the absence of any arbitrary action on the part of the Executive.

"For these reasons I confidently ask the Council to show by their votes that they regard the Press Act as a beneficial measure and one necessary in the public interests, as necessary now as it was at the time it was passed. I further ask Hon'ble Members to refuse to impair its practical value by any modification of its salutary provisions."

The Hon'ble Rai Sri Ram Bahadur said :—"Sir, the motion before the Council is not for the removal of the Press Act from the Indian Statute-book. The motion made by the Hon'ble Mr. Banerjee is simply this, that in the judgment given by the High Court of Bengal in the case of Mr. Mahomed Ali section 22 of the Act has been interpreted in such a way as to weaken the safeguards provided in sections 4, 6, 9 and 11. These sections lay down that if in the opinion of the Local Government the forfeiture of the security or of the press appears necessary, then the notice which is to be given in writing must state or describe the particular words, signs or visible representations. In other words, Sir, the grounds must be given on which the opinion of the Government is based. Section 22, as interpreted by the learned Chief Justice of Bengal, would not make the statement of the grounds on which the

opinion is based mandatory; but to use his own words, 'a repetition of an opinion cannot be the grounds on which that opinion is based.' The object of the proposed amendment is that section 22 should be so modified as to be in conformity with the provisions of the preceding sections inserted to serve as safeguards, and not to allow of the exercise of the powers given under the Act in an arbitrary way. The first portion of section 22 regarding which this Resolution is moved runs thus:—

'Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place.'

"That is the only point which has to be taken into consideration. The preceding sections prescribe that there should be a written notice by the Government, and clearly lay down that that notice should state or describe the signs, words and visible representations which are considered objectionable by the Government. These sections would imply that the notice without such statement or description is incomplete and that their omission does not fulfil the conditions laid down in the Act. I think, therefore, that the Resolution which my Hon'ble friend has moved, and especially its second part, is a sound one; and by amending the Act the Government would place section 22 in conformity with the preceding sections laying down necessary safeguards.

"With these words, Sir, I support the Resolution."

The Hon'ble Khan Bahadur Mir Asad Ali Khan said:—"Sir, the resolution before the House is a very important one. It concerns not one particular class but all classes of the Indian community. It neither asks for the repeal of the Press Act, nor attempts to introduce radical changes into the Act. The Hon'ble Mr. Banerjee makes but a modest request, and that, I suppose, in the light of a recent judgment of the Calcutta High Court. The first part of the resolution requires a clear statement or description of the offending words or articles or signs or visible representations within the meaning of the law, in all cases of forfeiture, and the second part requires a modification of the section 22 of the Press Act, so as to give real and definite powers to the High Court in dealing with forfeiture proceedings. Though certain sections of the Act provide in the earlier stages of forfeiture and before the application to the High Court that the Government should state or describe the offending words or signs or representations, one of the most important sections, namely, section 12, does not contain such a provision. In the absence of a statement or description of the offending words and even of a statement of the grounds that led to an action of forfeiture, no judicial authority, however high and competent it be, can pronounce a judgment. The public are entitled to know the exact nature of the offence, when an order of forfeiture is made. Though section 12 provides that the Government should state the grounds of its opinion, it is rather strange and unfortunate that in a recent well-known case it has failed to do so. Referring to this obvious omission, the learned Chief Justice of Bengal observed in one of his judgments, 'the notification therefore appears to me to be defective in a material particular and but for section 22 of the Act it would, in my opinion, be our duty to hold that there had been no legal forfeiture.' If the offending words or signs or representations were stated or described, the Judges would have at least known the grounds of the action of the Executive. The observation of the Chief Justice brings me to the second part of the resolution, which is even more important than the first part. Elsewhere in his judgment, the Chief Justice says: 'Together with this section (meaning thereby section 12) must be read section 22 by which, with a qualified exception in favour of the High Court, all jurisdiction is in effect barred.' After this frank pronouncement by the highest judicial authority in the land, need it be said that the Press Act should forthwith be modified, so as to empower the High Court to deal with press prosecutions in an effective manner. But the Act, as it stands at present, is an instrument of unduly great power in the hands of the Executive, so much so that it makes the highest judicial tribunal feel their utter helplessness in the matter,

Hence such small modifications in essential particulars as the Hon'ble Mr. Banerjee suggests will bring the Act in conformity with the liberal principles of our Government. The exciting and critical times that demanded a stringent law are happily gone by, and the present peaceful times no longer require such a rigorous Press Act It is perhaps not fully known how little is the operation of the present Act calculated to promote the free growth of an independent public opinion. With these words I heartily support the resolution, and trust that it will meet with the acceptance of this Council."

The Hon'ble Raja Kushal Pal Singh said :—"Sir, after the very able and exhaustive treatment which the subject-matter of this resolution has received at the hands of the Hon'ble mover, I do not think I shall be justified in wasting the time of the Hon'ble Council by repeating what has already been stated by him. But the resolution is of such vital importance that I cannot give a silent vote in its favour. When the Press Bill was introduced into the Supreme Legislative Council, the country was assured by the then Law Member (Mr. S. P. Sinha) and Sir Herbert Risley that sufficient safeguards were provided in the Act to prevent an arbitrary exercise of authority by Local Governments. This assurance, however, falls to the ground under the interpretation put upon the Act by the Special Bench of the Calcutta High Court; and a situation has arisen which calls for the amendment of the Act on the lines suggested in the Resolution before the Council. If the two checks against arbitrary action by Local Governments were intended to be introduced into the Act, and if it is now found that the checks furnished have proved utterly abortive, it clearly behoves Government to take measures to revise the Act and bring it in conformity with the true purpose and intention of the Legislature. I think there ought to be no difficulty in amending the Act in such a manner as to make effectual the checks intended to be furnished, but not furnished, as a matter of fact, in the Press Act. With these few words I beg to support the resolution."

The Hon'ble Mr. V. R. Pandit said :—"Sir, the discussion which has proceeded upon the Resolution moved by the Hon'ble Mr. Banerjee has gone off at a tangent. The basis of the Resolution of Mr. Banerjee has been that there were assurances given in the course of the discussion that took place at the time that the Press Bill was passed into law in this Council that safeguards had been introduced in every case, whereas it has been found that those safeguards do not exist, and that, secondly, in order that the fullest effect should be given to the promises made at the time, such safeguards should now be introduced.

"The question of importance in connection with the Press Act, which was raised in the case decided by the Calcutta High Court, was really one with regard to the very wide terms in which section 4 of the Act was couched. It has been pointed out by the learned Advocate-General, who sat upon the Select Committee of that Bill, that the terms of section 4 were advisedly made fully comprehensive. The Press Act was directed against the malevolent activities of persons ill-disposed towards Government, Law and Order, and in order to meet every form which those malevolent writings intended for circulation through the agency of the printing press might take, the Government had necessarily to secure preventive and punitive powers in adequately wide terms. The evil was undoubtedly rampant at the time and it was realised by all the members who spoke on that occasion that, as it was an evil which it was found necessary to meet, if due provision had to be made, it ought to be made in an effective manner. It is admitted on all hands that the provision has been made in an effective manner. It is true, as was pointed out at the time by my predecessor in this seat, that the wording of the Act threw the burden upon the person against whom an order of forfeiture was passed of proving the negative, namely, that the publication concerned did not come within section 4 of the Act, and it has been pointed out by the Calcutta High Court that it is a burden almost verging on the impossible for any person to discharge; but that is all beside the point on the present occasion. The Resolution

does not concern itself with section 4 of the Act, and I would deprecate on this occasion any discussion upon matters which are not really covered by the terms of the Resolution. The main point at present before the Council is that, although in certain sections of the Act provision has been made that the Local Government, in forfeiting or passing an order in regard to forfeiture should state or describe the words, signs, pictures or anything else which has been taken exception to and which has led the Government to forfeit the Press or the newspaper. If the order does not specify these words, signs, or pictures, there is no provision in the Act to make that order illegal or liable to be set aside, for under the Press Act as it stands, the only power which has been given to the High Court to set aside an order of forfeiture is that contained in sections 17 and 19 of the Act, and that power is confined only to the case where the High Court comes to the conclusion that the particular publication does not contain any words, signs or other things which would bring it within section 4 of the Act. Section 22 of the Act has been referred to in this connection as making the order conclusive against all persons. The main question which has given rise to the controversy is one with regard to an order of forfeiture passed under section 12 of the Act, and it has been pleaded in the course of the discussion that the wording of section 12 of the Act is, or was intended to be, uniform with that of sections 6, 9 and other sections. As a matter of fact there is a very important difference between the wording of this section and the other sections, because in section 12 all that it is necessary for the order to specify is the ground upon which the opinion is based. This is different from the wording in the other sections, which require that the words, signs, or visible representations should be stated or described, and where in the same enactment different wording has been used, it is one of the accepted principles of construction that differences of intention must be ascribed and it must be held that the difference has advisedly been made. Now with regard to section 12, it has been laid down that—'Where any newspaper, book or other document, wherever printed, appears to the Local Government to contain words, signs, or visible representations of the nature described in section 4, sub-section (*1*), the Local Government may, by notification in the local official gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty; and thereupon any police officer may seize,' and so on.

"This therefore refers only to the newspaper or to the particular publication which has been ordered to be forfeited, and it is only fair to conclude that in connection with this section it was assumed that the injury to be inflicted upon the particular person would be of an insignificant character as compared with the injury that would be inflicted in the case of the forfeiture of a press or forfeiture of a security or of a newspaper. This would only refer to a few cases and that would be in connection with a few copies of the particular publication. The cases that have arisen have mostly been of this description. I do not think that there have been many cases where any forfeiture of a press or forfeiture of security has been ordered, and section 12 does not confine itself only to publications by anonymous authors, and even where action is taken under the section where the authorship is known or the press which has published it is known, I suppose the Government has been actuated rather by the desire of stopping the evil than by that of causing an injury, which is peculiarly what is required in the particular circumstances of the case. The Government in acting under section 12 would really be acting in a lenient manner in connection with cases where the provisions of this Act have been transgressed. There is however this to be said that every right of property deserves to be respected. Whether it is only a few copies of books worth a hundred rupees or so, or whether it is the security for Rs 5,000 or Rs. 10,000, or the press itself of considerable value, every person who owns property is entitled to have the grounds definitely stated to him because the provisions of this Act partake of the nature of a penal enactment. In the simplest criminal cases the accused is entitled to be informed as to what the charge is against him, and similarly in a case like this I venture to think that justice requires that the person against whom an order of forfeiture is passed

ought to be informed as to what it is that is taken exception to. No doubt it would be sometimes throwing a great burden upon a Local Administration to require the Local Administration to state all the extracts which have been objected to and show that it is not merely upon a pervading impression but upon some particular grounds that the Local Government is acting, and it should be quite possible and quite easy for it to give those extracts upon which the opinion is based which renders the publication liable to forfeiture.

"It is on this ground and not on the ground of any promises made in Council at the time when the enactment was passed that I support the Resolution which has been brought forward to-day by Mr. Banerjee The speeches to which reference has been made, particularly that of the Hon'ble Mr. Sinha, the late Law Member, referred specially to the provisions of the Bill as it then stood; and by no stretch of language can it be said that when referring to the safeguards provided under the Bill, the Hon'ble Mr. Sinha was referring not only to sections 6 and 9 but also to section 12 of the Bill as it then stood. I find also that the mere provision under section 12 of the Local Government being required to state or to describe the words, signs, etc., would not be of much avail because the Local Government having described anything which it chose to treat as being open to objection as falling under section 2 of the Act, there would be absolutely nothing in the Act to warrant any other higher authority to object to that order and to set it aside, because under section 17 the order can only be set aside if in the publication there is absolutely nothing which could come under section 4 of the Act. The Resolution therefore, I am sorry to say, does not help materially in improving the Act but it does help in drawing the attention of the Government to this anomaly with regard to section 12, and it is from that point of view, in drawing the attention of the Government to that anomaly, that I support the Resolution."

The Hon'ble Sir Reginald Craddock said.—"Sir, the Hon'ble Mover of this Resolution desires us to commend that the Press Act of 1910 be amended in such a way as to provide that when any order of forfeiture is made under the Act, the order must state or describe the offending words, etc., upon which the Local Government bases its orders. He also desires to amend section 22 so as to extend the powers of the High Court to set aside an order of forfeiture.

"To some extent some of the previous speakers have explained what the Hon'ble Mover did not make clear. He bases his proposals on securing a general similarity of procedure under the Act without actually specifying the section which would require to be amended to bring about that similarity. In effect the Hon'ble Member was urging that the procedure when a newspaper, book or document is forfeited under section 12 shall be similar to the procedure when a security or a press is forfeited, that is to say, that the wording used in section 12 should be assimilated to the wording of sections 4, 6, 9 and 11, notwithstanding that section 12 is totally different from those sections and that the language used is quite dissimilar. It has been made quite clear—"

The Hon'ble Mr. Banerjee said:—"I rise to a point of order. I do not think I made that statement at all. I was trying to illustrate from the various sections that in every section where the Government has the power of confiscating a press or security, the obligation is also cast to state the ground of that order."

The Hon'ble the Vice-President said:—"The Hon'ble Member will have a chance of explaining his remarks in his reply, and it is undesirable to interrupt speakers more than is absolutely necessary."

The Hon'ble Sir Reginald Craddock said:—"I was explaining what the effect was of the amendments which are proposed by the Hon'ble Mover, and the only way the object of his Resolution could be carried out would be by the amendment of section 12, which section he did not specifically refer to. But I would like to explain a little more the differences between these sections. In the case of the four sections, 4, 6, 9 and 11, the keeper of the press or the

publisher of the newspapers is a known person. He is a person whose valuable security or property is being forfeited. The descriptions of the words and illustrations, etc., which are held to infringe the law are communicated to him personally. In all these cases the order is communicated with full particulars to the specific person concerned by a special notice addressed to him and to nobody else, which notice is not made public. He is the person responsible in law for the printing and publication of the matter complained of, his property is being forfeited, and the law therefore provides that he should be explicitly told exactly what the Government had to complain of in his writings. Now in the case of section 12 the order of forfeiture relates not to a valuable security nor to a press. What it relates to is the objectionable book or document which will in many cases—in fact in most cases—be of most trivial value. It is notified publicly in the various Government Gazettes and it is a notice to people at large warning them and all persons that may be concerned that a particular book or particular pamphlet has been proscribed. It is designed primarily, as the Hon'ble Mover of the Bill, Sir Herbert Risley, said, to deal with cases of literature either printed abroad and over which the Government has no control, or printed secretly in India, the printers or publishers being unknown. It may of course be used in respect of publications when the printer or publisher is known, but in such cases neither the security nor the press has been forfeited and the mere forfeiture of the document itself would come under one of the minor penalties of the Act. Now the reason for this difference which I have explained, the difference between section 12 and the difference between the other sections was very marked, and I am sure no person of ordinary prudence would recommend to us that it is incumbent upon Government itself to do the very thing which this section is intended to prevent, namely, the dissemination to the world at large of anarchical, revolutionary, inflammatory or seditious literature. Nor do I think that any one is likely to contend that if the printer or publisher is so afraid of the contents of the pamphlet or book that he is publishing that he keeps the name of the press at which it is printed secret that he is entitled to much consideration if his pamphlet or book is found objectionable and is forfeited.

"Now in the case of literature produced outside India and imported into the country, the Government have all along possessed the power to prohibit its importation under the provisions of the Sea Customs Act and the forfeiture of such prohibited publications, which may be found to have escaped seizure at the seaports and to have found their way into the country, is the natural complement of the power to order their seizure at the ports. The bulk of the literature of this description proscribed under this particular section 12 is literature that is plainly revolutionary or designedly mischievous, though occasionally it may be found necessary to proscribe some document which though it may not be open to specially strong objection among European readers might yet be dangerous if circulated in India. In all these cases Government have no information as to how many copies may have entered India or who their possessors may be; and to publish the contents of such documents in Gazette Notifications can only be described as an act of extreme folly. It is therefore not possible for the Government to consent to the provisions of section 12 being amended so as to bring them into conformity with the other sections that I have mentioned.

"A good deal has been said, Sir, of the pledge given by the Hon'ble Mr. Sinha in his speech on the Press Act when it was being passed into law. But, as Mr. Pandit has just said, Mr. Sinha in describing the various safeguards was clearly dealing entirely with the safeguards afforded by the Act when either the security deposited or a press was being forfeited.

"This will appear from the very remarks which the Hon'ble Mover himself quoted. After discussing the various circumstances under which such forfeitures, *i. e.*, forfeitures of securities deposited by presses, can take place, Mr. Sinha proceeded to say 'Is it not a safeguard to provide that a man will not have his security forfeited without being told exactly what he has written that is taken exception to?' Obviously that passage in the Hon'ble Mr.

Sinha's speech could have no application to section 12, when no security is being forfeited and when in the majority of cases the possessor of the proscribed book is not the writer of the offending article, unless indeed he produced it secretly.

"I may remind the Council that though the Press Act of 1910 was thoroughly examined by a Select Committee, save members of which put in notes of dissent, and although many Hon'ble Members proposed amendments to various sections of the Act, yet there was not a single reference made either in any of the minutes of dissent to the provision of this section 12, nor did a single Member move in the Council to amend that section. The Hon'ble Mover might perhaps be taken to suggest—or it may be the suggestion of some people in the Council—that this was mere inadvertence; but Mr. Sinha was making his speech after the report of the Select Committee had been received. It was not a case merely of introducing the Bill, when Members had not had time to grasp its provisions. It is not a very long Bill. It had been examined line by line, clause by clause, by the Members of the Select Committee, and it was quite impossible therefore that a marked difference between section 12 and the other sections could have passed unnoticed by mere inadvertence. The fact is, as I have described, that the section was intended for a totally different set of circumstances, and that the difference in wording was absolutely intentional.

"I will now turn to the second recommendation contained in the Resolution. I may say at once that the action to be taken under the Press Act was all along intended to be the action of the Executive Government, but power was rightly reserved to no authority lower than the Local Government itself. This of course was in itself a very valuable safeguard. No Local Government is going to publish abroad, or take action which may come before the public or the High Court which is likely to show that it has acted in a very foolish and irresponsible manner. The Acts in the Statute-book are full of large powers reserved to Local Governments, and it is always assumed that the Local Government is a responsible body who will exercise those powers with reason and discretion. The only issue that it was intended should be submitted to judicial decision, and that only to a special bench of the High Court, was the question whether the words, illustrations, etc., which formed the subject of forfeiture fell within the aim of section 4 of the Act or not. Sir Herbert Risley said on this point: 'So far I have dealt only with the powers which are given by the Act' that was his previous description, 'I will now turn to the check we have provided. This consists of an appeal to a special tribunal of three Judges of the High Court against any order of forfeiture passed by the Local Government. If it appears to the High Court that the matter in respect of which the order was passed does not come within the terms of section 4 of the Bill, then the High Court will set aside the order of forfeiture.' 'I think it will be admitted,' he goes on to say, 'that that is a very complete check upon any hasty or improper action by the Local Government. We have therefore,' he concluded, 'barred all other legal remedies.' Consequently it is quite clear that there never was any intention to give any special bench of the High Court any other power except to decide Aye or No, whether the words, etc., complained of did or did not come within the description contained in the clauses and sub-clauses of section 4.

"Very naturally, the Executive Government will always desire to comply with the forms and prescriptions of the law as to the procedure to be followed; but the vital issue in this case—in all these cases—is whether the document concerned was or was not open to the construction placed on it which made its forfeiture proper,—whether that writing did or did not fall within the terms of section 4 of the Bill. That is the vital issue—vital to public interests and vital to private interests. If a technical error, and as I said, any irregularity of that kind would be unintentional on the part of the Government, if such irregularity were to come in and if that error in the form of the notification were to vitiate the action taken, then the most revolutionary pamphlet might have a free circulation while the error was being discussed and rectified. The Hon'ble Mover and various other speakers have laid great

stress on the judgment of the learned Chief Justice in the Macedonia Pamphlet case. Now I have studied the judgment with all the care that a pronouncement by so high an authority deserves. So far as any judicial finding of the Hon'ble Judges is concerned, it would not be proper for me in this Council to enter upon any discussion as to the correctness or not of their decision. But the learned Chief Justice appears to have been under some misapprehension when he opined that the mischief chiefly aimed at by the Press Act of 1910 was to check anarchical crime and political assassination. Although the legislature included incitements to these crimes in this Act, it had already passed Act VII of 1908 dealing with such objects, and the main object of the Press Act was to exercise a preventive control over seditious and mischievous writings which the prosecution of individual offenders had hitherto failed to secure. I mention this point although it has not been specifically referred to by the Hon'ble Mover or any of the other speakers, because naturally enough the judgment of so high an authority as the learned Chief Justice of Bengal may at any time be quoted in connection with the Press Act. There are some remarks in that judgment which were based, partly, apparently on his apprehension that the Act had been intended for the particular class of case involving incitements to violence. To that extent his judgment might be held to support the suggestion made by some speakers, although not very directly put, that the stringent circumstances which called the Act into existence and necessitated its being passed were no longer so acute. The Hon'ble Mover himself has once or twice referred to the fact that this judgment might be held in some sense to justify the repeal of the Act—at any rate, to justify its considerable amendment. Therefore I wish to make clear what the real object of the Act was, and to remove any misapprehension to which this *obiter dictum* of the Chief Justice might have given rise.

"Sir Herbert Risley, when moving the introduction of the Bill and explaining it, said that the check of incitement to murder and violence had been included in the Press Act of 1910, although it was already covered by the Press Act of 1908, because it was considered advisable to include such incitements in this Bill 'in order that we may, if necessary, take action of a less severe kind than that prescribed by the Act of 1908.' But besides such incitements there were five other classes of writings against which the Press Act of 1910 was directed, and these are all duly specified in section 4. Now it is quite true that the Chief Justice did complain that a mandatory portion of section 12 had not been complied with in the Government Notification, and he also alluded to the very wide terms in which section 4 had been drawn. But you will find in his judgment that he committed himself to no specific statement that the interpretation placed upon the document then before the Court by the Government was itself far-fetched or arbitrary; and he emphatically stated his concurrence in the view that the ability to pronounce on the wisdom or unwisdom—I am not talking about the legality or illegality, the lawfulness or the unlawfulness—but to pronounce on the wisdom or unwisdom of the Executive action, had been rightly withheld from the Court, and he gave his reasons for that view in no uncertain terms.

"I pass now to the statement that the obligation of the Government in issuing the Notification under section 12, of stating the grounds for its opinion, had not been discharged. The learned Chief Justice undoubtedly said that the Court had felt some embarrassment from the absence of these stated grounds in the Notification. But it has always been understood by Local Governments that when ordering the forfeiture of a document under section 12 it was sufficient ground for the Notification to specify which of the six clauses in section 4 and the sub-clauses attached to those sections were held to be applicable to the particular case. Thus if the possessor of a forfeited book were to ask why his book was forfeited, the Notification would tell him, because, in the opinion of the Local Government, it incited or tended to incite to murder, or it might be because it incited or tended to incite to the commission of an offence under the Explosive Substances Act, or incited or tended to incite to any act of violence; or again it might be that the writing complained of had a tendency to seduce any officer, soldier or sailor in the Army or Navy, or fell under one or other of the numerous sub-clauses, within

which the writings might fall; and when the Notification appeared, by a reference to it, the public at large, and the possessor of a proscribed document, would be able to judge what were the real reasons which led to the forfeiture of that document. But although the Chief Justice complained of embarrassment, neither he nor the Judges who sat with him indicated precisely what kind of facts or what kind of information would be held to comply with the letter of the section. The reproduction of the document *in extenso* would, as I have said, clearly be most unwise, and it would not put the chance possessor of the document in any better position than he was before. He has the document before him; mere reproduction of the document in the Notification will not put him in any better position to understand why it was being forfeited. Then the reproduction of certain passages which were deemed most objectionable would be equally undesirable for general publication in the Notification; and I think that every one would agree that it would be impossible for the Government to include in its Notification a discussion of the various arguments which had moved it. Especially would this be the case when there was a chance that the matter would come before a judicial tribunal; or even if there were no other objections to such a course the Government could obviously not bind itself, in the public interest, to the particular arguments contained in the Notification; indeed it must be remembered that in a great majority of these cases any delay in the order of forfeiture might result in the circulation of much dangerous, and seditious and mischievous writings before action could be taken. Even were the Government to attempt to comply with this section in some further way by quoting the particular paragraphs or lines of the offending document, yet in very many cases the pamphlets, etc., that are proscribed are throughout frankly revolutionary, or else their character may be deduced from their general effect on their readers, or may be deduced from their tone as a whole rather than from any single sentence extracted and divorced from its context. It is certainly a most relevant issue in this case, that although a considerable number—somewhere between 300 and 400—leaflets, books and publications have been proscribed by the various Local Governments since the Act was passed into law, no such forfeiture has ever before been challenged on this particular ground. For although it may be said that it is difficult to prove the negative in cases like these, and that the onus of proving, that the writing is not open to the construction put upon it by the Government, lies on him, yet in effect there is no doubt that his position will not prove so burdensome as might be thought. For there is the document before both of them; both sides have equal opportunities of putting before the Court the construction which, from their point of view, should be placed upon it, and it remains for the Court to decide upon the document and upon the arguments of both sides whether that construction is borne out by the document or is not.

"The Hon'ble Mover referred to the cases in which the Press Act had been applied during the last three years, on information supplied him by the Home Secretary; but he included them all in one total, and various Members committed a small arithmetical error in pointing out that 800 cases in three years made a little more than one a day, while as a matter of fact—"

The Hon'ble Mr. Bannerjee said:—"I said a little less than one a day."

The Hon'ble Sir Reginald Craddock said:—"The Hon'ble Mover said a little less than one a day, but it was another speaker who said that it came to a little more than one a day. As a matter of fact there are at present 1,647 newspapers and periodicals in India. Since the Act was brought into force, security was deposited from presses under section 3 in 147 cases only, and from publishers under section 8 in 100 cases. Under section 4, that is to say, when security which was given by the printer or the keeper of a press was forfeited, there have been only 5 cases altogether. Under section 6, there has been no case; that is, where the offending press having had its security forfeited and having given further security, offends for a second time; and of that there has been no case.

"Under section 9, that is the one under which security is forfeited, there have been two cases. Under section 11, when security is forfeited for a second time, there have been no cases. There have been altogether five applications only to High Courts in respect of orders of forfeiture or any other orders from which the law allows an appeal to the High Court, there have been only five cases; and, to the best of my knowledge, none of these have been successful. The large numbers which go to swell the total quoted by the Hon'ble Mover really relate to the proscriptions by Local Governments of these numerous leaflets and pamphlets, some of them of a very blood-thirsty kind, which have issued from time to time. In many of these cases also the Local Governments have merely repeated the notifications of other Local Governments so that if you arrive at the total of the documents affected by adding up the total of the proscriptions of each Local Government, you may largely overstate the case. I happen to be able to make this point the more clear, for I observed that the number of forfeitures have been largest in the Central Provinces and most of these forfeitures were made when I was Chief Commissioner of the Central Provinces. The reason why these forfeitures were large is because we reproduced and followed the lead of the surrounding provinces and from our central position we had colonists and immigrants of every race and language settled in our midst, and of course if a book or pamphlet is pernicious there is no reason why you should give exemption to particular people merely because they are not numerous. Although the total number of proscriptions in the Central Provinces comes to 211, yet the total number of original proscriptions were only three. That illustrates clearly how it is that these numbers from the various Provinces appear to represent a great number of proscriptions; though they total up to 1,100, as a matter of fact they have been just over 300. I think, therefore, that the Council will agree that the Press Act has been very moderately carried out and put into operation. Although the Hon'ble Mover from time to time, and other Honourable Members represent to us, that the tone of the Press has greatly improved and that the general situation has also greatly improved—it is a favourite topic with the Hon'ble Mover—it seems to me it would be very rash to remove these very things that have secured that improvement. You might as well say to us when after great labour and expense and many sanitary regulations we have improved the health of a town 'why have this expense and these harassing regulations, why not get rid of them?' What applies to the bodily health of a country may also apply to the mental health of its newspapers. Well, Sir, I am conscious that it may be said that although I have explained that there is nothing in the Act which can be held to be in any way contrary to any pledge or to its original intentions yet, from the judgment in the Macedonia case, it is difficult, and it remains difficult, for the possessor of a document to prove that the language of the document was wholly innocent and innocuous. I have drawn attention to the fact that the learned Chief Justice never said that that particular case of forfeiture was far-fetched. One of the Judges who sat with him, Mr. Justice Stephen, said:—

'I can well understand that in the mind of some Indian Muhammadans anger might easily and perhaps justifiably turn to a hatred of the Allies, from which, making allowance for the infirmities of human nature, a hatred of the co-religionists of the Allies would seem but a short step, especially for those whose co-religionists are involved in a national disaster.'

"While therefore the action taken in the Macedonia pamphlet case did not strain the law in any way, it certainly seems unnecessary for us to seek to amend the law on account of that case. The fact that it has been difficult in the past to prove that offending documents were innocent, seems to me the very surest testimony that the executive authorities have exercised their powers in no arbitrary or far-fetched manner, and have only proscribed those publications which are really dangerous in one of the ways mentioned in the Act.

"As for the future, Sir, I have a very lively faith in the independence of our High Court Judges and I feel, no doubt, if at any time the Executive Government should use their powers under this Act rashly or oppressively, that the Judges will find no difficulty in surmounting these obstacles and in invalidating their illegal action."

The Hon'ble Pandit Madan Mohan Malaviya said:—"Sir, the remarks which have been made by the Hon'ble the Home Member with regard to this Resolution which is now before the Council have simplified matters to a great extent. The issues are now clear. There has been a great deal of confusion in a portion of the discussion as to the real issue that is before the Council. There has been no suggestion on the part of the Hon'ble Mover that the Press Act should be repealed; the only proposal before the Council is that it should be amended in certain specified matters. Now, Sir, objection has been taken to the proposal to amend the Act. It has been pointed out that there is a difference in section 12 and section 4 and subsequent sections, and the difference is no doubt marked, but I submit that however different, this shows why the sections were framed as they were. Both the Hon'ble the Advocate-General and the Hon'ble the Home Member have mentioned that one of the reasons against stating the grounds upon which the forfeiture is ordered is that there will be a dissemination of the matter contained in the offending pamphlet. Now, Sir, the legislature provided against that. In the language used in section 4 it is said that there should be a notice in writing not to the world at large but to the keeper of the printing press. In section 6 again it is said: 'The Local Government may, by notice in writing to the keeper of such printing press, stating or describing such words, signs or visible representations, declare,' etc. Then we come to section 9 in which it is again repeated: 'The Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare'. So also in section 11. In all these sections the person concerned is the publisher or keeper of the printing press. The legislature have laid down that when an order for forfeiture is passed, the Local Government should state the grounds for the opinion upon which it has based its action, namely, that the words described in the pamphlet have offended within the meaning of the Act. But when we come to section 12 the language used is different. In that section the Council will notice it is said 'the Local Government may, by notification in the local official gazette, stating the grounds for its opinion, declare such book or other document to be forfeited.'

"So long, therefore, as we are dealing with persons who are the keepers of printing presses or publishers of newspapers, a statement of the grounds upon which the Local Government has based its action will not lead to the dire results which the Hon'ble the Advocate-General and the Hon'ble the Home Member apprehend. It is only in the case of a forfeiture where a publication will have to be made in a local gazette that such a danger could have arisen, and there the legislature has guarded against it by saying that it is merely stating the grounds; in the other cases the words, etc., are to be reproduced. In section 4 and the other subsequent sections the Local Government is required to say by notice in writing to the keeper of such printing press, stating or describing such words, signs or visible representations. These words are omitted in section 12, which merely requires that the Local Government should state the grounds of its opinion and declare such newspaper, etc., forfeited. So that, Sir, unless the matter comes before a judicial tribunal, as the Hon'ble the Home Member said, there would not be much danger of any dissemination of poisonous matter by reason of the statement of the object, and on that ground I do not think that there need be any apprehensions. But as the Hon'ble the Advocate-General said very clearly, the law requires that these grounds should be stated, and I do not think that my friend's amendment, so far as this part of the Resolution is concerned, can be supported. Not only because of the statement of the Advocate-General, but because of the language of the Act, it is clear that no such amendment is required so far as that section is concerned. But, Sir, the point before the Council raised by the Resolution is that relating to section 22. Section 4 and section 12 provide that on a person's doing a certain thing certain results will follow and it gives authority to the Local Government in those circumstances to issue an order of forfeiture of the printing press, newspaper, etc. No one questions that this Act, as the Hon'ble Home Member said, was passed to vest in the

Executive power which would allow them to deal summarily with offending newspapers and printing presses and I do not doubt that that object was very clearly before the mind of the Legislature when the Act was passed; but the question, Sir, is that the Legislature has laid down that in a certain set of circumstances the Local Government will have the power to perform certain acts, to declare a printing press forfeited or to order security to be deposited or to order a book to be forfeited. The question now before the Council is—and it has been very powerfully raised in the judgment of the Calcutta High Court—if the Local Government, in the exercise of the power which the Act has vested in the Local Government, fails to observe the procedure which is laid down in the Act, is there to be any remedy for the person aggrieved by the act of the Local Government or not? The Legislature has thought it fit to say that there shall be certain safeguards. We need not go very much into a discussion as to what the pledges at the time were or what the intention was. We have got the Act, and we have to deal with it as it stands. Now, in the Act, Sir, in section 6 and subsequent sections it is laid down that the Local Government shall describe the words or signs or visible representations which, in its opinion, offend against the provisions of the Act, and it also says that it shall describe the reason of its opinion. If the Local Government fail to describe it, I submit that the safeguard that is provided has been taken away. The safeguard lay in the Local Government reproducing the offending words in order to warn the person concerned that he had offended, and secondly, in the fact that when the Local Government came really to consider whether there was anything in the publication which came within the purview of the Act, it would have to calmly consider what the exact meaning of the words used was and that judicial act which the Local Government would have to exercise under the Act would provide the exact safeguard against any injustice being done to the person to whom the notice goes. Secondly, in the case of stating its opinion and the reason for its opinion—say, for instance, in the case of section 12, when the Local Government decides to publish in a newspaper that a certain book or pamphlet is to be forfeited on the ground that it offends within the meaning of section 4 of the Act, I submit the mere fact that the Government has to state its grounds was one of the safeguards provided by the Act. But now, Sir, suppose that the Local Government fails to respect the safeguard; fails, that is to say, to either refer to any words in the proclamation or in the notice, or it fails to state the grounds of its opinion, where the words are not referred to, for thinking the words do offend within the meaning of the Act, what is the remedy of the person? Throughout the British Empire, where there is any right given to a man, there is a certain remedy provided in the criminal law of the country and the Criminal Procedure Code. The High Court, as being the highest court of appeal, is vested with the power of revising any act of any authority or person, including the Local Government and the Government of India, if it has not been done under the sanction of some statute or law. That power may be restricted, Sir, as it has been restricted under the Press Act that we are discussing. But then, if the restriction is not justifiable, as has been shown in the judgment of the Calcutta High Court, it is time that, in the interests of justice, the Government should consider the matter. If any person were to take away any person's property except strictly in accordance with the law, that person could go up to the High Court and say, 'My property has been unjustly taken away: exercise your revisionary jurisdiction and set aside the order.' Here was property taken away under section 12 of the Press Act. There was an application to the High Court in which it was pleaded that the property was not taken away in compliance with the provisions of section 12 of the Act. Now, Sir, the High Court was satisfied that it was so. The Hon'ble and learned Chief Justice said, in words which can never be mistaken, that he was satisfied that there was room for interference by him, but, he said, he is barred. The Hon'ble the Chief Justice in his learned judgment says—in one passage he sums up the whole situation:—

'The Advocate General has convinced me that the Government's view of this piece of legislation is correct and that the High Court's power of intervention is the narrowest. Its power to pronounce on the legality of the forfeiture by reason of failure to observe the mandatory conditions of the Act is barred. The ability to pronounce on the wisdom or

unwisdom of the Executive order is withheld and its functions are limited to considering whether the applicant to-day has discharged the almost hopeless task of establishing that his pamphlet does not contain words which fall within the all-comprehensive provisions of this Act.'

"It goes on to say :—

'I describe it as an almost hopeless task because the terms of section 4 are so wide that it is scarcely conceivable that any publication would attract the notice of the Government in this connection to which some of the provisions of that section might not directly or indirectly, whether by inference, suggestion, allusion, metaphor or application or otherwise apply.'

"Now, Sir, the Hon'ble Home Member, in his admirable reply, said that there was reason and the learned Chief Justice did recognise the force of the provision that the High Court should not have the ability to pronounce upon the wisdom or unwisdom of the Executive, and that it had been rightly withheld, but the Hon'ble Member did not, and perfectly rightly he did not, justify the withholding of the power from the High Court to pronounce on the legality of the forfeiture by reason of failure to observe the mandatory conditions of the Act. I submit, Sir, that a very strong case has been made out for the Government to consider the whole position. We all, I think, are agreed—I don't think there has been one dissentient voice—that writing which is calculated to injure public interests, to excite evil passions or to create bad blood, should, under certain circumstances and certain safeguards, be absolutely checked.

"We are all agreed that the press ought to be helped by restrictions and regulations to run a smooth and honourable course and not abuse the great liberty which it enjoys, but, Sir, bearing all that in mind, the Legislature has passed an enactment, which is admitted on all sides to be an enactment of a very repressive character, to regulate the action of the press. Under this Act those who offend can be punished. But suppose there are persons who do not offend, who are not guilty of violating the provisions of the Act, is there a safeguard provided to protect them from an injury which they have not deserved, which the Government most certainly does not wish that they should suffer, and which was not contemplated? Now, Sir, that was the provision with regard to this section. Under sections 4 and 6 and under section 19 there are certain things which can be done, but section 22 definitely limits the operation, as the Hon'ble Judges of the High Court have held, of the interference of the High Court only to cases where the High Court is to ask the applicant to show that the words complained of do not fall within the definition of section 4. And the substance of the amendment now before the Council, Sir, is that the Government should be pleased, in view of the remarks of the Chief Justice and of the facts which have come within its knowledge, to reconsider this Act and make up for the deficiencies both with regard to this section 22 by incorporating a provision to make it clear that the general power which the High Court possesses undoubtedly of remedying any wrong which may be done under cover of an Act is not taken away from the High Courts so far as this is concerned and also—"

The Hon'ble the Vice-President said :—"I must ask the Hon'ble Member to resume his seat. He has already exceeded his time."

The Hon'ble Pandit Madan Mohan Malaviya said :—"May I conclude, Sir?"

The Hon'ble the Vice-President said :—"You may conclude in one minute."

The Hon'ble Pandit Madan Mohan Malaviya said :—"To make it clear that the High Court will still have the power to give a remedy to a person who has a real grievance that the provisions of the Act have not been complied with and that he has been wrongly dealt with, and I hope that when the time comes an amendment of other sections will also be considered and the Act put on such a basis that it should not be subjected to the severe criticism which this Act has been subjected to and similar to which no other Act of Government has ever been subjected."

The Hon'ble Sir Ibrahim Rahimtoola said :—" Sir, I think it will be recognised that the question at issue before the Council has been very ably discussed from all aspects of the case. The Hon'ble the Home Member and the Hon'ble the Advocate General have very ably laid before the Council the Government view of the case and they have explained in what manner the safeguards actually act under the provisions of the law. I think it will be admitted that, when the Press Act was passed in 1910, much of the non-official opposition was won over on the ground that adequate safeguards had been provided in the Act, and were it not for the weight and importance attached to the safeguards in the speeches made on the occasion, it is very likely that considerably greater opposition would have been extended to the measure when it was passed. I think the Council is indebted to the Hon'ble the Home Member for having clearly explained that though so much was made out of the safeguards, in actual practice the safeguards are *nil*, and I will try to explain why I say so. The Hon'ble Member said that the very fact that the Local Governments were required to exercise the powers under the Act was a safeguard. I admit it to be so. But the Local Governments have got to act on the reports of their subordinate officers. Most of these publications are in the vernacular, which I do not think many members of the Local Governments themselves know. They have therefore to rely upon the reports and the translations of their subordinates before making their orders. If that is regarded as a safeguard, the people who hold it as such are welcome to that opinion, but I think that this Council will want some further safeguards against the orders passed by a Local Government, which is after all the highest *executive* authority in each Province, and such safeguards have to be provided.

" I should like to point out that the reference to judicial courts provided in the Act is ' that appeals shall be heard by a bench of at least three judges of the highest court in a Province, if there are three or more judges in that Province; but that if there are only two judges, they will form the tribunal of appeal; and if they disagree, that is to say, if one judge holds that the order ought to be set aside and the other holds that the order should stand, then the order does stand.' There is no further remedy for the appellant. If there are three judges, then the view of the majority prevails. Now, Sir, the safeguard in the Act, as very lucidly explained by the Hon'ble the Home Member, is merely this: that the judicial bench will decide whether the action of forfeiture taken by a Local Government comes within the provisions of section 4. If any words (and a few words in a book or pamphlet may be held to do so) come within what has been aptly described as the comprehensive provisions of section 4, then the order must stand. Be it remembered that when an appellant goes to the High Court in these matters he has to face heavy expenditure in costs, and when he goes up in appeal all that he can have is a declaration from the High Court that in the most comprehensive terms in which section 4 has been drafted and embodied in the Act, a few words or signs, or visible representations do come within the purview of section 4, and therefore no relief is allowable. That to my mind completely disposes of the question of safeguards.

" Then we come to the next point, namely, that we should repose trust and confidence in the executive actions of Local Governments. No one wishes to raise at this stage the slightest question as to the manner in which these provisions are given effect to by local authorities, but it stands to reason that when Government ask the Legislative Council to sanction legislative measures empowering large and comprehensive powers to be given to them, they ought to follow one of two courses. They ought to say, ' gentlemen, we want these powers to be conceded to us, and we want you to extend to us your trust and confidence in regard to the manner in which we will apply them.' That would be a perfectly straight course, and if they do that and the Council accepts that view, there is nothing further to be said. But if they come to this Council and say that ' though we want certain powers in regard to matters which are under consideration and that in order that these powers may not be arbitrarily exercised, we suggest embodying in the Act certain safeguards to protect people who may be adversely affected by executive action

under those provisions,' we are entitled to ask that those safeguards should be effective and of such a character as to give the relief which Government themselves propose they should have. Now, Sir, the question at issue before the Council, when the latter alternative is adopted by Government, is to see whether the safeguards which are deliberately intended to be provided are real and effective, or are merely illusory. If they have been declared illusory by the Calcutta High Court, the Hon'ble Mr. Banerjee's Resolution, which merely asks that they may be made effective, should be accepted. I do not see that there is any reason why they should not be made so effective by an amendment of the Act.

"Our experience in the Legislative Councils has shown that there have been frequent occasions on which Executive Governments have come before the Legislative Councils asking for amendments of existing enactments, on the ground that while the original intention of the legislature was in certain specified directions and the Bill had been drafted on those lines and passed, matters had gone to the High Court and that Court had put a different interpretation upon the words used, necessitating an amendment in order to carry out the original intention of the legislature. Well, Sir, that has often been the case so far as Bombay is concerned; and we must recognise that however able the draftsmen may be, they are not infallible. When Government have thus frequently approached the Legislative Councils to amend enactments in view of the interpretations put upon them by the High Court going against the original intentions, surely it is open to us to go to the legislature also and to say that in view of the safeguards deliberately provided in the Act having proved illusory, Government should take steps to introduce amendments in order to give effect to their original intentions and to make the safeguards real and effective.

"As the Hon'ble Mr. Banerjee's Resolution asks for nothing more, I beg to support it."

The Hon'ble Mr. Chakravarti Viziaraghavachariar said :—"Sir, I wish to say a few words on the question before us. It seems to me that the issue is a very narrow one. What is asked for is a verbal amendment of the Act, and I hope that previous speakers will forgive me if I say that a great deal of their observations were somewhat irrelevant to the issue before us. The question broadly is whether this particular law was intended to be made in accordance with the declared intentions or no. Now the High Court has found that there was a considerable discrepancy between the declaration and the performance in respect of this enactment and the mover of the Resolution asks that this discrepancy may be removed. I do not at all see any rigid distinction between the provisions under section 12 and the provisions of the other sections relating to forfeiture in reference to appeals, because the law distinctly says that any man who has an interest in the subject of these forfeitures, no matter under what section the order for the forfeiture has been made, whether under section 12 or under the other sections, has a right to appeal to the High Court. The only question therefore to consider is, Is the Act under consideration in accordance with the express declarations and intentions of Government? We have nothing whatever to do with the question whether the political position has since improved, or has remained stationary or has grown worse. We must try to understand our position somewhat retrospectively, and see what those who made this law intended it to be.

"As regards this question, the High Court have distinctly declared that there is an inconsistency between the declaration and the performance. The learned Advocate-General, I believe, traverses this point. I always yield to him in construing law and wish to yield to his argument if I can. But I would remind him of the statement which he himself made in the course of the argument in the case of Mr. Mahomed Ali. When the learned Chief Justice was about to refer to the speeches made in this Council at the time of the passing of the Act, the distinguished Advocate-General stopped him and said 'Please don't, look at the Act itself. You are not at all entitled to look at the speeches.' He said this in the consciousness that there was a discrepancy

between the speeches and the Act If there was no such discrepancy, why did the learned Advocate-General adjure the Chief Justice not to look at the speeches? Therefore, so far as the argument of the learned Advocate-General is concerned, I believe he agrees with me that the performance was not in accordance with the declarations

"Then there is the speech of the Hon'ble the Home Member. I am somewhat embarrassed in understanding his position as much as were the Judges of the Calcutta High Court in understanding the Act. If he claims as a member of the Government to construe the Act with a competency which others do not possess, I humbly enter my respectful *caveat*. He was not here when the Act was passed, any more than I. As to the present and future intentions of Government in reference to the Act, no doubt he is Government, but as to the construction that should be put upon it when it was passed, I claim fellowship with him while disclaiming equal capacity. At that time, in view of what members on behalf of Government said, Government offered consolation to the members and to themselves that it was not a purely executive measure. I would call attention to Sir H. Risley's statement in this connection. It is said it is administered by the Executive Government. It may be administered by the Executive Government, but the measure is not an executive measure and it cannot be administered in the sense of a purely departmental order or of what is called an act of State. To the extent to which the Executive Government administers this Act it is a judicial tribunal and the powers exercised are judicial, and what is more appeals are allowed by the law to the High Court.

"It is in these circumstances that the question arises as to what was then intended. Now I do not see how a distinction made between section 12 and the other sections is germane to the question at issue. The Resolution may be divided into two parts. The first part relates to the question whether a statement of the grounds of action under certain sections of the Act is imperative. The High Court have distinctly held that it is imperative; there is no doubt about that. I cannot therefore understand the official position taken up, which, if it means anything clearly, practically amounts to saying 'We do not care about what the High Court has said and we will do as we please.' The Act has been construed and declared to have a particular meaning by the High Court and I believe even the Executive Government is bound to abide by that declaration and interpretation, unless and until it amends the Act itself. Taking the law therefore, as it is, so far as the first portion of the Resolution is concerned, no reform or amendment is needed in my opinion. Mr. Justice Woodroffe, Mr. Justice Stephen and the Chief Justice agreed that the words there are imperative and that it is not open to the Executive Government to violate that portion of the law and that they are bound to state the grounds so as to give an opportunity to the person concerned to know what it is that he is called upon to answer. That being so, the first part of the Resolution may be left out of consideration altogether in my humble view.

"As regards the latter part, I cannot understand the opposition at all. Is it plain that there was a defect or is it plain that there was not a defect? It seems to me that the trend of the argument is this. Apparently there was a defect, but as it suits us we wish to have it. That, I understand to be the upshot of the argument in opposition to the Resolution. The Act makes no distinction as regards an appeal to the High Court between one set of forfeitures and another set of forfeitures. I read the speeches in the Council, both when the Bill was introduced and when it was passed, to see if there was any distinction between this section 12 and the other sections. I find there is none. The learned Advocate-General confines the pledge of Mr. Sinha to one set of provisions but the speeches themselves do not warrant such an interpretation as the Hon'ble the distinguished Advocate-General has put upon them. It was admitted by the learned Advocate-General that the Notification of forfeiture relating to Mr. Mahomed Ali was unsatisfactory and that it was not drawn up by a lawyer. While the learned Judges in playful irony declared that what they were saying might come within the Act. Also all the three learned Judges say that they were considerably embarrassed

in dealing with this case. The Chief Justice said so. In the course of the argument Mr. Justice Woodroffe asked this question of the Advocate-General: 'Has the reference to this Court any reality at all? Can this Court fulfil any function at all?' While so, we may take it that all the three Judges were considerably embarrassed in interpreting the Act. Mr. Justice Stephen says: 'Never was an English Judge since the early days of English Jurisprudence in so helpless a position,' as he was in this case. So all these three Judges were considerably embarrassed. Is it the object of this law to embarrass the Judges, so that they may say 'We are helpless. We can't do anything.'

"All that we ask for is to make the language of the Act plain. There is yet another aspect. And it relates to the question of the statement of grounds in the order of forfeiture. It is said that it would defeat the objec of the Act to state the grounds in the order. Sir Herbert Risley said that 'this Act was intended to take the place of public opinion in India; that in England there is a strong public opinion, and that it is a weapon of national education in this country.' May I know how this nation is to be educated by this Act and its administration? By embarrassing the learned Judges of the High Court? For God's sake, let us know how is this Act to educate us? It may repress us, it may cause inconvenience to us, but to say that it will educate us is to use language which has no meaning, if it is kept in its present state. So this is the law which is to be a means of national education—a weapon of national education which will embarrass the brilliant Judges of the Calcutta High Court is an extraordinary invention worthy of 20th century civilisation. All we ask is this—'Please put the law in such a way that ordinary common sense can understand what is meant by it.' I cannot at all understand, therefore, the attitude of the Hon'ble the Home Member, and I am somewhat surprised that Government does not hold out any hope to us that it will hand the law over to a learned expert to see in the light of what is said whether it cannot be improved. I expected the Hon'ble the Home Member would have given us an answer like that, and that the point raised will be sympathetically considered. My disappointment is very keen that such a hope is not held out to us. I do not think it necessary to allude to the other observations made by the Hon'ble and learned speakers on either side, because in my opinion they are beside the issue. The Hon'ble the Home Member assured us that the independence of the High Court would be maintained in its integrity, and that where any obstacles are thrown in its way he has expressed the hope that it will surmount them. I am thankful for the assurance and I join in the hope. It strikes me that before this judgment was passed, there are humble lawyers like myself who would have thought that the High Court would have set aside this order as *ultra vires* and void, which the Advocate-General and the Home Member both say was declared by it to be a valid order. I am sorry to state that to say so is a brilliant quibble The High Court did say that the order passed by the Government was *ultra vires*—it was an order in no legal sense. But they say 'we cannot give effect to our opinion by reason of this section 22.' To say that the High Court found this order to be valid is not correct. They found it *ultra vires*, illegal and void. Mr. Justice Stephen asked whether he was prevented from looking into this case because the Government had no jurisdiction to pass such an order. Therefore to say that the High Court has declared such an order to be valid is, I respectfully suggest, a splendid mistake, a brilliant quibble.

"On the whole therefore, Sir, the question is 'Have we or have we not to revise this Act, intended not to suppress actual crime but to repress the roots of crime and intended as a means of national education. What the Government say amount to this: 'The High Court may say and do what they like, but we will pass our orders as we have been hitherto doing under the Act.' While in this unsatisfactory state the law is, the administration must continue unsatisfactory too. I respectfully submit that the case made out by the Hon'ble Mover of the Resolution as regards the necessity for the reform of the latter portion of the Act, that section 22 should be amended, has not been answered at all by Government."

The Hon'ble Sir Gangadhar Chitnavis said :—" Sir, I do not agree with the Hon'ble Mr. Banerjee that the time has come when the Act should be repealed I supported the measure in 1910 from an honest belief in its utility in the existing circumstances. The experience gained in the interval in the working of the Act has, if anything, confirmed me in the opinion that it was necessary and good, both for the Government and the public The administration of the law has, as pointed out by the Home Member so far been satisfactory and unattended by any real or general hardship, while the mere existence of such an Act has had a preventive and deterrent effect upon the malevolent activity of a disaffected portion of the Press. There is now less of incitement to violence and there can be no doubt that the most potent means of exciting hatred in the public mind before has been the cheap and irresponsible Press. The Act has thus justified its existence. But this conviction does not prevent me from advocating an improvement in the language of the Act. To-day's discussion also shows that there is a difference of opinion among the best of lawyers, that an ambiguity exists, and that the law is not clear on certain points. And so it will not be improper if the ambiguity and cause of embarrassment are removed by making the provisions quite clear."

The Hon'ble Mr. Banerjee said :—" Sir, I will not, at this hour, take up many minutes—especially in view of the criticisms which have already been offered by my Hon'ble friends over there on the speech of the Hon'ble the Home Member and of the Hon'ble the Advocate-General. Sir, it is abundantly clear from the discussion that has taken place, that, barring one exception of course, there is a general consensus of opinion as regards the course that should be followed in connection with the Press Act. I think we are all on this side of the House agreed that if there are safeguards provided in the law, those safeguards are inoperative and that they should be made effective. I am sorry that there was a disposition on the part of the Hon'ble the Home Member to go back upon the declarations of the past and discard the safeguards provided in the law itself. For the Hon'ble the Home Member observed that there was a danger in publicity. I am afraid it is too late to make that complaint at this hour. Section after section explicitly say that where notice of forfeiture is issued the grounds should be *stated*. I hope the Government of India and the various Local Governments will give effect to this part of the law, such as that law is. We were expecting some kind of assurance from the Hon'ble the Home Member that in future when a notice of forfeiture was issued the notice would contain the grounds—would contain a statement of the words, signs or visible representations as indicated in the law. I must confess to a sense of disappointment that an assurance to that effect was not forthcoming.

" But the Hon'ble the Home Member must have been convinced of the trend of public opinion as regards this matter. There is practically unanimity in our ranks, amongst the non-official Indian Members, that the law should be amended, so as to render operative the safeguards which have been provided; and if on this occasion there is to be an adverse vote, as I fear there is likely to be, I feel that the Council have not heard the last of this matter; because there is a body of public opinion in favour of an amendment of this Act, and we, as representatives of the public voicing the public sentiment, will feel it our duty to give expression to that sentiment within the walls of this Chamber. Whatever may be the outcome of this debate, I am sure, I fear, that the matter will have to be brought before this Council again."

The Resolution was put and the Council divided as follows:—

Ayes.	*Noes.*
The Hon'ble Nawab Saiyid Muhammad.	His Excellency the Commander-in-Chief.
,, Mr. C. Viziaraghavachariar.	The Hon'ble Sir Robert Carlyle.
,, Mr. R. R. Venkataranga.	,, Sir Harcourt Butler.
,, Khan Bahadur Mir Asad Ali Khan.	,, Sir Ali Imam.
,, Sir Ibrahim Rahimtoola.	,, Mr. Clark.
,, Babu Surendranath Banerjee.	,, Sir Reginald Craddock.
,, Maharaja Ranajit Sinha.	,, Sir William Meyer.
,, Maharaja M. C. Nandi.	,, Mr. Wynch.
,, Raja Abu Jafar of Pirpur.	,, Mr. Donald.
,, Mr. M. S. Das.	,, Mr. Walsh.
,, Mr. Huda.	,, Mr. Arthur.
,, Rai Sitanath Ray Bahadur.	,, Major Brooke-Blakeway.
,, Rao Bahadur V. R. Pandit.	,, Malik Umar Hyat Khan.
,, Sir G. M. Chitnavis.	,, Mr. Diack.
,, Raja Kushalpal Singh.	,, Mr. Laurie.
,, Rai Sri Ram Bahadur.	,, Mr. Arbuthnott.
,, Pandit M. M. Malaviya.	,, Mr. Rice.
	,, Maung Mye.
	,, Mr. Abbott.
	,, Mr. Hailey.
	,, Sir T. R. Wynne.
	,, Mr. Monteath.
	,, Mr. Cobb.
	,, Sir A. H. McMahon.
	,, Mr. Brunyate.
	,, Mr. Wheeler.
	,, Mr. Enthoven.
	,, Mr. Sharp.
	,, Mr. Porter.
	,, Sir E. D. Maclagan.
	,, Major-General Birdwood.
	,, Mr. Michael.
	,, Surgeon-General Sir C. P. Lukis.
	,, Mr. Russell.
	,, Mr. Maxwell.
	,, Major Robertson.
	,, Mr. Kenrick.
	,, Mr. Kesteven.
	,, Mr. MacKenna.
	,, Sir William Vincent.

The Resolution was accordingly rejected.

The Council adjourned to Tuesday, the 13th January, 1914.

W. H. VINCENT,

Secretary to the Government of India,
Legislative Department.

DELHI:
The 14th January, 1914.

APPENDIX A.

[*Referred to in the Answer to Question 1.*]

Extracts from correspondence with the Local Governments and Administrations regarding the arrangements for giving prompt relief to a revenue-payer when a holding deteriorates during the currency of a settlement.

GOVERNMENT OF INDIA.

Government of India Resolution No. 6-193-2, dated the 24th May 1906.

* * * * * * *

12. They also take the opportunity of asking all Local Governments, including those of Madras and Bombay, to explain what arrangements exist under the present system of assessment for ensuring that when a holding deteriorates during the currency of a settlement, owing to such causes as diluvion, a deposit of sand, the spread of salts or of weeds difficult to eradicate, water-logging, or the failure of natural irrigation, relief shall be promptly given to the individual revenue-payer by an abatement of his land revenue. They are of opinion that even in the case of a land revenue assessment fixed for a term of years, a reduction of assessment should be at once given in such circumstances, so far as the necessary machinery can be provided, and they are prepared to accept the resulting loss of land revenue in preference to continuing to realise from an unfortunate revenue-payer a land revenue assessment which is no longer justified by the circumstances of his holding. They are aware that in most provinces rules exist for the abatement of land revenue on an entire estate when its resources have been seriously reduced, but they considered that, where such an advance is practicable, further provision should be made to enable relief to be given without delay to individual landholders, who may have suffered from deterioration affecting their own holdings, although the estate as a whole may not have suffered a serious diminution of resources. As already said, they are entirely in favour of the policy of granting exemption from assessment to new improvements for a period sufficient to recoup the landholder for his expenditure, but they attach still greater importance to the prompt relief from over-assessment of holdings which have suffered deterioration since they were assessed. It was observed in paragraph 37 of the Resolution of the 16th January 1902 that any such alteration of the assessment is in conflict with the terms of the original contract by which the landholder has undertaken a liability for loss in return for an expectation of profit, but that in this matter the interests of the Government are identical with the interests of the people, and that it is unwise to exact from impoverished persons a revenue which they really cannot pay, merely because they are under an engagement to pay it. To these views the Government of India adhere, and the policy which they wish to see adopted is required, not only in order to encourage improvements, but for the attainment of an equitable distribution of the land revenue demand.

REPLIES FROM LOCAL GOVERNMENTS AND ADMINISTRATIONS.

MADRAS.

Letter from the Government of Madras, No. 2918, dated the 20th October 1908.

With reference to the correspondence ending with Mr. Wilson's letter No. 793-193-2, dated 24th May 1906, I am directed to forward a copy of the marginally noted Proceedings of this Government, in which their conclusions on the subject of the taxation of agricultural improvements effected by private persons at their own cost, which is dealt with in the resolution of the Government of India No. 6-193-2, dated 6th May 1906, are embodied.

G. O. No. 2917, dated 20th October 1908.

Madras G. O. No. 2917-Rev., dated the 20th October 1908.

* * * * * * *

10. In paragraph 12 of the Regulation the Government of India ask all Local Governments to explain what arrangements exist for ensuring that, when a holding deteriorates during the currency of a settlement owing to such causes as diluvion, deposit of sand, the spread of salts or of weeds difficult to eradicate, water-logging or the failure of natural irrigation, relief shall be promptly given to the individual revenue-payer by an abatement of land revenue. The Government of India are of opinion that, even in the case of a land revenue assessment fixed for a term of years, a reduction of assessment should at once be given in such circumstances so far as the necessary machinery can be provided, though any such alteration of the assessment would be in conflict with the terms of the original contract by which the landholder has undertaken a liability for loss in return for an expectation of profit

11. The District Officers consulted on the point are of opinion that cases of deterioration of holdings owing to such causes as those mentioned by the Government of India are of rare occurrence in this Presidency, and that, whenever they occur, they are sufficiently met by the existing rules for relinquishment with or without sub-division, for the transfer of unirrigable wet lands to dry, for remission and for the lowering of the classification of the irrigation source. Where land goes permanently out of cultivation owing to such causes as diluvion, deposit of sand and water-logging, the obvious remedy for the ryot is to relinquish it. Temporary disturbances owing to such causes are met by the remission rules in Board's Standing Order No. 14. Cases of deterioration of land owing to the spread of weeds, such as prickly-pear, denote slovenly cultivation and do not deserve any consideration. The spread of salts is peculiar to lands irrigated for the first time for purposes of cultivation and is of rare occurrence in this Presidency. Where lands have become uncultivable on this account the ryot will not retain them in his holding even at reduced rates of assessment. Frequent floodings counteract the saline nature of the soil and where surplus water is available, as under the Godavari and Kistna river systems water is supplied free to the ryot for this purpose. In the case of dry lands in this Presidency, facilities for irrigation are not taken into account in assessing them to revenue and such lands do not, therefore, require any relief when their irrigation source fails either temporarily or permanently. In the case of wet lands if the irrigation source falls permanently out of repair, its ayakat is transferred to dry and the assessment thereon is revised accordingly. Where however, during the currency of the settlement, the irrigation work falls into disrepair to the extent of permanently impairing its condition, capacity or efficiency but not of rendering it wholly useless, the classification of the irrigation source can be lowered under the orders of the Board of Revenue in virtue of the power vested in it by Board's Standing Order No. 1 (5). This course has the effect of automatically reducing the rates of assessment on the lands in the ayakat of the source. Failure of irrigation due to such temporary causes as vicissitudes of season is provided for by the remission rules in Board's Standing Order No. 13, under which if the lands are left waste the whole wet assessment is remitted and if dry crops only are raised dry assessment is charged, the difference between the wet and dry assessments being remitted.

12. There may also be cases in which the land has deteriorated in value, but has not gone entirely out of cultivation. The Government agree with the Board of Revenue that in such cases the lowering of the settlement classification and grouping and the consequent reduction of assessment should be restricted to cases where large areas have been affected, *e.g.*, part of a village, ayakat of a tank, etc. Collectors can, under the existing rules, bring to the notice of the Board cases in which owing to deterioration of land the assessment fixed on it has become excessive and submit proposals for lowering the assessment to be dealt with by the Board. The Government consider that this is sufficient and that the grant of relief in similar circumstances to individual holdings is beset with great practical difficulties which render the adoption of such a course in this Presidency impossible.

13 In this connection the Board of Revenue suggests that the rule authorising the composition of double crop assessment at reduced rates on account of existence of wells in a field may be modified to provide for the transfer of such lands to single crop in the event of the wells falling into disrepair The Government consider such a provision to be desirable, and accordingly direct that the following sentence should be inserted before the last sentence of paragraph 1 (5) of Board's Standing Order No. 1 :—

"If the wells, however, fall into disrepair the land should be transferred from compounded double crop to single crop wet."

* * * * * * *

Resolution of the Board of Revenue, Madras, No. 39, dated the 11th February 1908.

* * * * * * *

8. In paragraph 12 of their Resolution the Government of India enquire what arrangements exist under the present system of assessment to ensure that when a holding deteriorates during the currency of a settlement as an effect of such causes as floods, the deposit of sand, the spread of salts or of weeds difficult to eradicate, water-logging, failure of natural irrigation, etc., relief shall be promptly given to the individual revenue payer by an abatement of his land revenue They observe that they are aware that in most provinces rules exist for the abatement of land revenue on an entire estate when its resources have been seriously reduced, but they at the same time desire that, where such an advance is practicable, further provision should be made authorising the grant of immediate relief to individual holders whose holdings have deteriorated in value, although the estate as a whole may not have suffered a serious diminution of its resources. As observed by Mr. Moir, these suggestions are applicable to Northern India, where the assessment is levied on the entire holding and takes into account such incidents and *profits a prendre* as fisheries, pasturage and future extension of cultivation, and not to the Madras Presidency, where the assessment is levied on each survey field with reference strictly to its extent and actual capacity for growing some standard crop. Under the revenue system prevailing in Northern India, if any of the assets forming the basis of the assessment of a holding is seriously diminished, the assessment becomes proportionately oppressive, whereas, under the revenue system in force in Madras, no such difficulty is experienced since the assessment has a definite relation to the productive capacity of the land and to nothing else, and the ryot is at liberty to relinquish any field that he does not require. Nor is it necessary for a ryot to resign the entire extent of a field ; and the relinquishment of portions of fields is permissible, provided the extent relinquished is not less than two acres if dry and one acre if wet, while portions that have been destroyed or rendered useless by floods or other causes beyond the ryot's control may be relinquished, however small their extents. This fully covers all cases of diluvium, deposit of sand and water-logging. The spread of salts or saline inflorescence is peculiar to lands irrigated for the first time for purposes of cultivation, and is, comparatively speaking, a rare occurrence in the Madras Presidency. Where lands have become uncultivable on this account, the ryot will not retain them in his patta even at a reduced rate of assessment. In the majority of such cases frequent floodings or the cultivation of special crops afford an effective remedy. The existence of weeds of any considerable extent on occupied land is a clear indication of slovenly cultivation, due either to the negligence of the ryot or to the unwieldy size of his holding, and there is no reason why he should in such cases be granted a reduction of assessment, the more so as sufficient allowance is made at settlement on account of unproductive areas. In the case of waste lands various concessions are granted under the cowle rules to meet the initial cost of bringing them under cultivation, but no such concessions seem called for in respect of occupied lands. Cases of deterioration of wet lands due to failure of the irrigation source are fully provided for in the existing rules. The imposition of the full wet assessment is not possible in such cases, and it is a recognised principle that where

irrigation is not possible, either temporarily owing to vicissitudes of season, or permanently owing to the irrigation source having fallen into disrepair, the portion of the assessment imposed in consideration of the supply of irrigation by Government should not be levied. Board's Standing Order No 11 provides for the transfer of unirrigable wet land to the head of dry, while Standing Orders Nos. 13 and 14 allow the grant of remissions when crops have failed either owing to vicissitudes of season or under exceptional circumstances, such as floods, hailstorms locusts and the like. When an irrigation source falls into disrepair to such an extent as to be incapable of irrigating the lands which it was intended to irrigate, the ryots are granted, on application, a remission of the entire assessment if the land has been rendered waste in consequence, or of the difference between the wet and dry rates if a dry crop is grown, provided that the disrepair was not brought about by the ryot's own failure to execute customary repairs. Further, if an irrigation work becomes utterly useless or goes permanently out of order, the Collector can transfer its ayakat to dry, thus reducing the assessment to the dry rate Where an irrigation work falls into disrepair to the extent of impairing its condition, capacity or efficiency, but not of rendering it wholly useless, it might be expedient to lower the classification of the source as well as of the lands under it. Although there is no express provision to this effect in any of the rules on the subject, it has always been the practice to grant a reduction of assessment in such cases. In these circumstances the Board considers it unnecessary to modify the existing rules or practice. So far as the Madras Presidency is concerned any attempt to enforce the payment of assessment, when the advantages of irrigation on which it is based no longer exist, would defeat itself, as under the existing revenue system the right of relinquishment is practically unrestricted The only case in which such a policy may appear feasible is in respect of land assessed as special rates under ruined Government tanks handed over for private repair and maintenance. In this case the ryot can have no ground for complaint, for if the tank goes out of use it must be on account of his own negligence and even then it is open to him to abandon the tank and to get his land transferred to dry. The Board considers that the special rate cannot be regarded as a tax upon improvements inasmuch as it is merely a return for the money spent by Government in the past on the construction and maintenance of the tank and for the facilities afforded for the cultivation and irrigation of the lands under its ayakat as compared with other dry lands in the neighbourhood. This view is confirmed by the fact that at resettlement such special rates are enhanced solely with reference to the increase in the dry assessment of the village. As irrigation facilities do not enter into the calculation of the assessment on dry lands, the question of granting an abatement of the revenue due from them on account of the failure of the irrigation source does not arise. When the lands in a holding deteriorate, the ryot can take advances from Government at favourable rates of interest for their reclamation and the existing rules regarding relinquishments, seasonal and exceptional remissions and transfers from wet to dry sufficiently meet all cases of deterioration of lands mentioned by the Government of India

9. It may be urged, however, that where land has deteriorated in value but has not gone entirely out of cultivation, an abatement of revenue should be allowed. The Collectors of Nellore, Malabar, Salem and Vizagapatam suggest that provision should be made for the reduction of assessment in such cases by lowering the settlement classification and grouping, while the Collectors of North Arcot and the Special Settlement Officers of Cuddapah and Kurnool, Nellore and Tinnevelly would restrict the application of the suggestion to cases where large areas have been affected, *e.g.*, part of village or *khandam* or the ayakat of a tank. There seems to be no objection to the proposal thus modified; paragraph 6 of Standing Order No. 1 indeed enjoins upon Collectors the duty of bringing to the notice of the Board cases of large relinquishments of land which may, with any degree of probability, be ascribed to excessive assessment. It is quite possible that heavy relinquishments in a village may be due to the settlement rates having been pitched too high, in which case the obvious remedy is to make an all-round reduction of assessment. But the Government of India apparently desire to introduce, as far as practicable, a system under which individual cases of deterioration will be duly considered and disposed of.

Such cases have at present to be dealt with at the annual jamabandi by the Collector and his Divisional Officers, who, however, lack the requisite experience. As observed by Mr. Paddison, the practical working of the Government of India's suggestion seems to be beset with overwhelming difficulties, for the relief cannot be fairly distributed unless the rule is thoroughly made known, and if once the ryots understand that there is a chance of the assessment being reduced on these grounds, the Revenue Department will be flooded with petitions for reduction of assessment on various grounds. On the other hand, the disposal of such petitions cannot be satisfactorily attended to by the higher Revenue officials and would, as observed by Mr. Davidson, ultimately rest with the inferior officials whose opportunities for fraud and corruption would be enlarged Even if sufficient machinery were provided, the Revenue Department cannot satisfactorily alter the classification fixed by a professional department whose officers are equipped with special training and are given full discretion in carrying out the settlement. The Board further begs to point out, in support of these arguments, that the assessment of unclassified land, granted on patta by Revenue officers in the interval between two settlements, has often to be revised at the next settlement. Returning to the case of lands which have undergone deterioration a Revenue officer may not, as observed by Messrs. Moir and Chadwick, even be aware that due allowance has already been made by the Settlement Department for the alleged deteroration. A Settlement Officer, on the other hand, raises or reduces the classification intuitively and as a result of long experience and the policy inculcated by the Government of India would, as observed by Mr. Moir, accordingly give a ryot, who complained of defects such as *tsoudu* or submersion which had been taken into account at settlement, the right of bringing, what would practically be, second appeals against assessments arrived at during settlement which is undesirable. On the whole, the Board respectfully submits that the proposals of the Government of India in paragraph 12 of their Resolution, however desirable in theory are open to grave practical difficulties which render their introduction in this Presidency inadvisable.

10. The Special Settlement Officer, Salem, while fully alive to the evils and difficulties attendant on the introduction of a system involving extensive reclassification or resettlement by officers of the Revenue Department or detailed inspection by Revenue subordinates, submits the following proposals for consideration. He considers that in all cases of deterioration, whether sudden or gradual, whether temporary or permanent (by " permanent " he means " lasting at least until the expiry of the current settlement "), whether wide-spread or local, the Collector should be in a position to decide with the help of an expert, if necessary, whether the grant of temporary relief would suffice or whether a permanent reduction of the assessment is called for :—

(1) If the deterioration is sudden such as is caused by exceptional floods, the Collector should forthwith grant a remission of the entire assessment or of only a portion of it according to the nature and circumstances of the case, and then consider whether the reduction should be permanent or temporary. The Collector of Coimbatore also makes a similar recommendation in cases of deterioration caused by insect pests or fire.

(2) If the Collector finds that deterioration is temporary, he can, on the application of the ryot, substitute for the ryotwari tenure a system of cowle tenure for such period and on such terms as the circumstances of the case may warrant. A similar suggestion has also been made by the Collector of Godavari in respect of lands containing a deposit of sand and of lands near the sea-coast or alongside of backwaters.

(3) If the Collector considers that the deterioration is permanent, the assessment should be permanently reduced. When only a few holdings are affected, the Collector should be authorised to grant a reduction of the existing assessment on the recommendation of the Tahsildar or the Divisional Officer, but such orders would be liable to revision at the next resettlement. The Collector of Malabar makes a similar recommendation in the case of

garden lands destroyed by strong winds or floods and of lands washed away by the sea, which the ryots are unwilling to relinquish.

(4) If the deterioration is widespread, a whole-time officer of tried experience in settlement work should be deputed to make full enquiry and submit, for the orders of the Board and Government, detailed proposals for a general reduction of assessment. The special Settlement Officer would even give retrospective effect to the reduction, should such a course be found necessary.

As observed by Mr. Richards, it is hardly possible to frame rules to suit all these conditions any more than those referred to in paragraph 6 *supra*, and there is probably no actual case on record in which land has so far deteriorated as to call for reclassification in the interval between two settlements.

11. (1) In this connection the Special Settlement Officer, No. V Party, recommends that the rule authorising the composition of double crop assessment at a reduced rate on account of the existence of wells in the field may be so modified as to provide for the transfer of such lands to single crops in the event of the wells falling into disrepair. With reference to this suggestion, the Board begs to invite the attention of Government to their Order No. 463-Revenue, dated 12th May 1887, in which they agreed with the Board in considering that such transfers should not be carried out by Collectors without the previous sanction of the Board. Transfers of this kind were freely allowed in the past in deserving cases and the Collector of Trichinopoly quotes several instances in which the policy was adopted. There is, however, no explicit provision in the Standing Orders authorising the procedure ; the omission will be supplied, should Government so direct.

* * * * * * * * * *

BOMBAY.

Letter from the Government of Bombay, No. 6376, dated the 25th June 1908.

With reference to the Resolution of the Government of India, No.6-193-2, dated 24th May 1906, indicating the policy of that Government regarding the assessment of land improvements, I am directed to forward, for their information, a copy of the Resolution of this Government, No. 6106, dated 18th June 1908, which contains orders on the several points dealt with in, and the information required in, paragraph 12 of that Resolution.

The Bombay Government Resolution No. 6106, dated the 18th June 1908.

* * * * * * * * * *

13. In paragraph 12 of the Resolution, the Government of India ask all Local Governments to explain what arrangements exist under the present system of assessment for ensuring that when a holding deteriorates during the currency of a settlement, owing to such causes as diluvion, a deposit of sand, the spread of salts or of weeds difficult to eradicate, water-logging or the failure of natural irrigation, relief shall be promptly given to the individual rate-payer by an abatement of his land revenue. They are of opinion that, even in the case of a land revenue assessment fixed for a term of years, a reduction of assessment should at once be given in such circumstances so far as the necessary machinery can be provided, and they are prepared to accept the resulting loss of land revenue in preference to continuing to realise from an unfortunate revenue-payer a land revenue assessment which is no longer justified by the circumstances of his holding. Cases of the nature specified by the Government of India are provided for by law or by executive orders as briefly explained in the following paragraphs.

14. As regards the deterioration of land on account of diluvion, section 47 of the Land Revenue Code provides that every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may from time to

time be made in this behalf, to a decrease of assessment, if any portion thereof, not being less than half an acre in extent, nor less than one-tenth of the holding, is lost by diluvion. The regulations on the subject are contained in Nos. 44 to 47 of the rules under section 214 of the Land Revenue Code. Rule 45 prescribes that it is the duty of the village officers to ascertain from time to time and to record the changes caused by alluvion and diluvion in every holding subject to such changes. Government Resolution No. 773, dated 13th February 1880, directs that a decrease of assessment can be granted under section 47, only if the portion of the holding lost by diluvion amounts to not less than half an acre and to one-tenth or more of the holding. Under Government Resolution No. 2771, dated 12th April 1886, in all cases in which the area of holding is less than half an acre, only the one condition is required of the loss by diluvion exceeding one-tenth of the holding affected.

15. In respect of deterioration due to failure of irrigation, special orders are already in existence, the most important of which are those contained in Government Resolutions, Public Works Department, No. 34-W. I. 419, dated 5th March 1895, paragraph 4 (*b*) and (*c*), and Revenue Department No. 2207, dated 25th March 1899. The former Resolution prescribes that if a tank is in such a dilapidated condition or of so little use, that it is decided not to repair it, the Revenue authorities should consider whether any reductions in the assessment of the land under it are necessary and should take any such action in the matter as may be required. The effect of this order is that the share of the assessment on land under the tank which is due to the water may be remitted, and the assessment on that land may be levied at dry crop rates only, and that the same rates may be levied on the land in the bed of the tank, which becomes available for cultivation. The Resolution proceeds to direct that if rayats, who have been charged water assessment on land under a tank which Government have decided no longer to maintain, wish to maintain it themselves, they may be allowed to do so, subject to sanction, and that in such cases the tank site will not be treated as available for cultivation, this concession being taken into account when considering any reductions of assessment; with the result that cultivation in the tank bed, which takes place as the water recedes, or when the tank does not fill, is charged no assessment, and that any remission on account of the watershare of the assessment of land under the tank is reduced by the amount of the assessment of land in the tank bed at dry crop rates. In the Resolution of 1899 it is directed that if complaints are made of injury to, or contraction of, rice cultivation due to the disrepair of Government tanks, they should be promptly and fully investigated, and that lists of the abandoned tanks may also be prepared and placed in the hands of Assistant or Deputy Collectors who should be required, in the course of their inspections, to note cases in which serious and permanent injury to cultivation is clearly due to disrepair of the tanks.

Under Government Resolution No. 6946, dated 3rd October 1902, power was delegated to the Commissioners to reduce, on account of deficiency of water for irrigation, survey settlement assessments, when the reduction did not exceed Rs. 50 in each case, and to the Collectors, when the amount to be reduced did not exceed Rs. 10 in each case. These powers were, however, subsequently withdrawn under Government Resolution No. 1788, dated 7th March 1904, in paragraph 1 of which it was remarked that cases in which the propriety of an abatement of revenue on account of permanent loss of some source of water-supply or the like reason was not open to question could not now be numerous, and that all cases in which a decrease of assessment for the remainder of the period of settlement was considered desirable should be reported to Government for disposal through the Director of Land Records.

Government Resolution No. 5475, dated 5th July 1905, lays down the following principles to be applied to the reduction or remission of assessment of certain lands assessed for water advantages in the district of Gujarat :—

> " (*i*) Where tanks or other sources of water are abandoned as Government improvements, ' himayat ' should be struck off the assessment of land under them ; and it should also be struck off the assessment of land which manifestly cannot now be irrigated from tanks maintained by Government, the procedure prescribed in

the penultimate sentence of paragraph 1 of Government Resolution No. 1783, dated 7th March 1904, being followed in every such case.

"(*ii*) For land which is irrigable from tanks or other sources of water belonging to or maintained by Government, 'himayat' should be remitted if in any year the water for irrigation is not available for that land.

"(*iii*) When rice is grown without irrigation from any source of water belonging to or maintained by Government, the general orders relating to the suspension and remission of land revenue should be applied with the understanding that the assessment is 'akasia' and soil assessment combined. When any crop other than rice is grown in lieu of rice in rice land, the orders should be applied with the understanding that the assessment is the soil assessment alone, 'akasia' being entirely remitted."

Under the orders contained in Government Resolutions Nos. 9393, dated 24th September 1907, and 11896, dated 3rd December 1907, a Committee, consisting of the Superintendent of Land Records and Registration, N. D., the local Assistant Collector and the local Irrigation Engineer, has been appointed to examine the condition of the tanks in the districts of Gujarat in respect of which "himayat" is charged, and the Committee has been informed that with due regard to the instructions issued in Government Resolution No. 5475, dated the 5th July 1905, Government are prepared to remit the "himayat" assessment where it presses heavily.

By the orders contained in Government Resolutions Nos. 2759, dated the 15th March 1907, and 7087, dated the 18th July 1907, patasthal assessment has been abolished entirely in several talukas which are precarious in tracts, and recommendations have been called for from Collectors in respect of other talukas in similar circumstances. No. 7 of the rules regulating the grant of suspensions and remissions, as revised by Government Resolution No. 5324, dated the 27th May 1908, also provides for the remission of water-rates when the water fails to produce irrigated crops below four annas.

The several orders mentioned above provide amply for any deterioration that might be due to failure of irrigation from any cause.

16. Relief in respect of the other causes of deterioration mentioned by the Government of India, is not provided for by the Land Revenue Code or special orders, but is covered by the general orders contained in Government Resolutions Nos. 7713, dated the 27th July 1884, and 5423, dated the 5th August 1902. In the Resolution of 1884 it is laid down that it is the duty of all District Officers to observe carefully a contraction of cultivation or decrease in agricultural stock in any locality, and thereupon to ascertain the cause and propose remedial measures, and it is observed that the relinquishment of highly assessed land is *prima facie* evidence that the assessment is too heavy and should be promptly made the subject of investigation. Under the orders contained in the Resolution of 1902, the following instructions for the guidance of the Revenue Officers have been inserted in the compilation of the Standing Orders of Government under the head "Lands and Land Revenue" :—

"The importance of early detection of cases of local deterioration of soil should also be borne in mind. The subject is of vital importance not only to the well-being of the people but in the interest of the State, since the failure to reduce the demand as soon as it ceases to be payable without serious difficulty results in a weakening of the resources of the people and finally in loss of revenue. Collectors and Sub-divisional Officers are directly responsible for bringing the fact of local deterioration to the notice of Government at an early stage."

In Government letter No. 3163, dated 11th May 1901, to the Commissioner, Northern Division, it was observed that the relinquishment of land in several parts of Gujarat had indicated that in some places the assessment was for the present at any rate too high, that there seemed reason to believe that there had been somewhat extensive deterioration through salt efflorescence, water-logging

and other causes, and that in the circumstances it was desirable to make a general reduction of the assessment for, at any rate, some years, in all areas where there was reason to suspect that the assessment pressed hardly on the cultivators; and the Commissioner was asked to report whether there were any well-defined areas in which such relief could suitably be given until the effects of famine had disappeared, and if so, what measure of reduction he would recommend. Copies of the letters were also forwarded to the Commissioners, Central and Southern Divisions, with the intimation that it was understood that the assessment in the districts in their Divisions was generally so light that a temporary reduction of it was not required, but that, if the Commissioners considered that relief of the kind indicated was needed in any tract, their recommendation would receive due consideration.

In accordance with these orders, when definite cases of local deterioration from any cause are brought to the notice of Government, they are dealt with on their merits; and assessments have actually been reduced by Government on several occasions as a result of reports showing deterioration due to the deposit of sand, water-logging and salt efflorescence.

* * * * *

BENGAL.

Letter from the Government of Bengal, No. 491-T. R., dated the 6th May 1907.

* * * * *

5. As regards the reduction of assessment when an improvement ceases to exist, or to be of use, it appears from paragraph 11 of the Resolution of the Government of India that the proposed rules are intended to apply chiefly to small land-holders who have constructed, at their own expense, wells or other irrigation works, the existence of which has been taken into account in fixing their assessment; and it is recognised that rules on this subject cannot be satisfactorily carried out in the absence of a trustworthy and well-supervised land revenue agency. This question also is not one of much practical importance, so far as Bengal is concerned. Under proviso (*ii*) to section 29 of the Bengal Tenancy Act, an enhancement fixed in consequence of an improvement is payable only so long as the improvement exists. If the raiyats of a proprietor of a temporarily settled estate or of a tenure-holder in a Government estate were to refuse to pay the rents fixed at the settlement, on the ground that the improvement which was taken into account in fixing those rents was no longer effective, the landlord would almost certainly apply to the Collector for a reduction in his assessment on this account. But this would not often happen; as a rule the landlord would continue to realize full rents from his raiyats rather than give them an abatement and apply for a corresponding reduction of assessment. The real problem in such cases is to reach the raiyat who has suffered owing to the failure of an improvement; and in the absence of a qualified local agency, this problem, in Bengal, would generally prove insoluble. It has already been pointed out that no enhancement is made in respect of improvements by raiyats in Government estates. There is, therefore, in their case, no necessity to provide for abatement if the improvement should fail.

6. There are at present no special orders for ensuring that when a holding deteriorates during the currency of a settlement owing to such causes as diluvion, deposit of sand, water-logging or the failure of natural irrigation, abatement of land revenue should promptly be given. Each case is dealt with on its merits. The raiyat can claim a reduction of rent under section 38 of the Bengal Tenancy Act; and, in the case of temporarily settled estates, if the raiyats obtained a reduction on this account, the temporary settlement-holder would no doubt apply for a corresponding reduction of revenue. But the practical difficulty is the same as that pointed out in the last paragraph. No general scheme for taking prompt and systematic action for the reduction of rents on the first appearance of the deterioration appears to be practicable under present conditions.

* * * * *

UNITED PROVINCES.

Letter from the Government of the United Provinces, No. 4132, dated the 24th December 1906.

* * * * *

4. As regards the matter dealt with in paragraph 12 of the Resolution the prompt relief from over-assessment of holdings which have suffered deterioration since they were assessed, the conditions of the United Provinces appear to vary widely not only from those of the raiyatwari provinces of Bombay and Madras, but also from those of the Punjab. In the United Provinces, estates (or *mahals*), not holdings, are assessed, and in most cases a holding, except in the case of proprietary cultivation, is not earmarked as the property of a particular co-sharer. If there is local deterioration in a holding as opposed to a *mahal*, the loss will, therefore, ordinarily fall on the whole body of co-sharers and not on any particular sharer. The rules in force (Board's Circular No. 8-III), provide sufficiently for prompt relief when *mahals* deteriorate, whether from water-logging, the spread of *kuns* grass, or the like, and the case of diluvion is governed by special rules (Board's Circular 6-I). It is but seldom that there is deterioration which is confined to one or two individual holdings. In these conditions the policy laid down by the Government of India would appear to have but little application to the circumstances of this province.

PUNJAB.

Letter from the Government of the Punjab, No. 39, dated the 12th February 1907.

With reference to Mr. Wilson's letter No. 797-193-7, dated $\frac{24\text{th May}}{1\text{st June}}$ 1906, and in compliance with the request contained in paragraph 12 of Department of Revenue and Agriculture Resolution No. 6-193-2 of the same date, I am directed to forward, for the information of the Government of India, a copy of a letter No. 62, dated 24th January 1907, from the Senior Secretary to the Financial Commissioner, together with its enclosures, which explain the existing arrangements in the Punjab for remitting land revenue on lands carried away or injured by river action.

* * * * *

Letter from the Financial Commissioner, Punjab, to the Government of the Punjab, No. 62, dated the 24th January 1907.

With reference to paragraph (*ii*) of Mr. Maclagan's letter No. 1383-S., dated the 7th August 1906, regarding the arrangements in force for the reduction of assessments on holdings which deteriorate during the currency of a settlement, I am directed to forward the marginally noted papers, and to say that Mr. Douie's letters give the information asked for. In the Finanial Commissioner's opinion the arrangements already made in this province for the reduction of assessments due to (*a*) diluvion and (*b*) other minor causes are generally quite adequate, and the question is always fully considered at each settlement.

Copies of —
(*i*) letter No. 4892, dated the 31st October 1906, from Settlement Commissioner, Punjab;
(*ii*) letter No. 4883, dated the 31st October 1906, from Settlement Commissioner, Punjab.

* * * * * * * * * *

Letter from the Settlement Commissioner, Punjab, to the Financial Commissioner, Punjab, No. 4882, dated the 31st October 1906.

In your No. 6306, dated 19th October 1906, I have been asked to explain the existing arrangements in the Punjab for remitting land revenue on lands carried away or injured by river action. In dealing with the subject one can hardly avoid noticing also the rules for the assessment of lands thrown up or improved by river action.

2. The importance of the subject has from the first been recognized in the Punjab, where the action of the seven great rivers and of the numerous torrents which issue from the hills renders the assets of the estates on their banks very unstable. The policy followed at different times as regards periodical revisions of assessment on account of changes due to river action is briefly described in Chapter XII of the Land Administration Manual, which is now being printed, and need not be set forth here. Rules issued under the first Land Revenue Act, XXXIII of 1871 (rules D-II 12-34), provided for a yearly revision so far as necessary of the lands affected. The rule of assessment is No. 19—"In ordinary cases, however, only the actual increment or decrement will be considered. The rates fixed at settlement on lands which have not been affected by the river will not be enhanced, nor will culturable waste which was not assessed at settlement be brought under assessment. But lands previously unculturable, and therefore unassessed, will be liable to assessment if by alluvial deposits they become culturable and lands assessed in previous years below the full settlement rate may have their assessment increased up to that rate, or to any lower rate which, with reference to the capabilities of the soil, may be thought applicable." It will be observed that that rule assumes that the demand on land which is carried away will be remitted, but while it provides for assessing unculturable lands rendered culturable by deposits of silt, it says nothing about the reduction of the demand on cultivated land injured by deposits of sand. No doubt the practice was better than the rule, for long before it had been pointed out in Book Circular XLII of 1860 that overlaying by sand might do as much mischief as actual abrasion, and both cases were provided for in the form of annual statement used from that time onwards.

But in ordinary cases only actual changes will be considered.

3. Section 59 (1) of the Land Revenue Act, XVII of 1887, provides that special assessments may be made by revenue officers when existing assessments "require revision in consequence of the action of water or sand".

Rule 217 under that Act is as follows:—

(*i*) Where land of an estate paying land revenue is injured or improved by the action of water or sand, the land revenue due on the estate under the current assessment shall be reduced or increased in conformity with the instructions issued from time to time in this behalf by the Financial Commissioner with the sanction of the Local Government.

Alluvion and diluvion assessments.

(*ii*) And in every such case the distribution of the land revenue over the holdings of the estate shall be revised, so as to similarly reduce or increase the sum payable in respect of the holding in which the land that has been injured or improved is situated.

The rules issued under Act XXXIII of 1871 were reproduced, in substance, in the 33rd of the Consolidated Revenue Circulars published in 1890. There are no other general rules, but for reasons presently to be given they have ceased to be of practical importance, and this is recognized in the revised edition of Revenue Circular No. 33.

4. There are two reasons for this. It was gradually realised that in some large tracts the changes caused by river action were so frequent and so extreme that nothing would serve but the abandonment of a fixed assessment altogether in favour of a fluctuating one, which involved the reassessment of the whole demand harvest by harvest. Broadly the fluctuating system has been applied—

(*a*) to the Indus valley below Kalabagh, where the river ceases to be hemmed in by hills on either bank;

(*b*) to parts of the Chenab valley in Gujranwala and Jhang;

(*c*) to the Ravi valley in Montgomery and Multan;

(*d*) to the Sutlej valley in part of Ferozepore, in Montgomery, and in Multan;

(*e*) to the valley of the river formed by the union of the Chenab and Jhelum in Multan and Muzaffargarh;

(*f*) to the valley of the Panjnad in Muzaffargarh.

5. In the second place the general rules referred to above are being replaced as districts come under settlement by special rules all more or less framed on one model. The process of replacement is now nearly complete. The defects of the old general rules are referred to in the 455th paragraph of the Settlement Manual, but they have ceased to be of practical importance.

6. As stated in the same paragraph, the "defects have been corrected in the special rules drawn up at recent settlements, the main feature of which is the division of the land into two or three classes, for which separate rates are fixed, the class to which any particular field belongs being mainly determined by the crop or crops grown on it. A light rate is also generally imposed on uncultivated land which is fit for grazing. At the same time the procedure connected with the measurement and record of changes due to river action has been greatly improved."

7. A collection of the special rules sanctioned up to 1896 was issued in that year in Part I of a Volume of Selections from the records of the office of the Financial Commissioner, new series, No 19. It might be worth while to bring that part up to date by adding the rules for remission of revenue on lands submerged by lakes in the hill circle of the Shahpur and Jhelum districts and for alluvion and diluvion assessments of land affected by the Soan river and hill torrents in Jhelum.

Shahpur Settlement Report, paragraph 104; Jhelum Settlement Report, Appendix C.

8. Rules dealing with alluvion and diluvion consist of two parts:—

(*a*) assessment rules sanctioned by the Local Government; and

(*b*) procedure rules sanctioned by the Financial Commissioner.

Perhaps as an example of the sort of rules now adopted in the Punjab the Government of India might be supplied with—

(*a*) the assessment rules applicable to lands affected by the Ravi and Beas in Gurdaspur and Amritsar;

(*b*) the assessment rules applicable to lands affected by hill torrents in Gurdaspur;

(*c*) the procedure rules with forms of statements.

The above will be found on pages 68—70, 81—83, 64—67 of the volume referred to in my last paragraph.

Letter from the Settlement Commissioner, Punjab, to the Financial Commissioner, Punjab, No. 4883, dated the 31st October 1906.

In your No. 6306, dated the 19th October 1906, I have been referred to the 12th paragraph of Government of India Resolution No. 6—193-2, dated the 24th May 1906, and asked to explain the arrangements in the Punjab regarding remissions for deterioration due to—

(*a*) diluvion,

(*b*) other minor causes enumerated in the paragraph cited above.

These minor causes are "A deposit of sand, the spread of salts or weeds difficult to eradicate, water-logging, or the failure of natural irrigation."

2. As instructed I have dealt separately with diluvion in my No. 4882 of to-day's date. In doing so I have necessarily also referred to damage done by sand, for the spread of sand in the Punjab is mainly a result of river action. The failure of natural irrigation probably refers chiefly to the failure of beneficial inundation by rivers or hill torrents, which also falls within the scope of

what are somewhat loosely called alluvion and diluvion rules. As an example the 15th of the Lahore rules may be referred to:—

> "Lands hitherto assessed as sailab, but subsequently found to be out of reach of the ordinary river flood owing to a change of the river course or other cause, shall be relieved of its sailaba assessments and shall be assessed under rules 13 and 14 (*i.e.*, shall be put in the 3rd or lowest class)."

3. The other causes of deterioration are not very prominent in this province We suffer from reh, but not, I think, to the extent that some tracts in the United Provinces do. One hardly hears of the spread of any grass in the Punjab doing such mischief as the spread of kans has done in some parts of the adjoining province. Water-logging has certainly wrought much evil in some canal tracts and near streams like the Ghaggar and Sarusti, but the remedy does not lie so much in revenue arrangements as in the application of engineering science to the problem of drainage. In the case of the Karnal Naili, it was provided at last settlement that even within its term any estate which found itself in difficulties might throw up its fixed and demand a fluctuating assessment.

4. The action to be taken when an estate is found to have markedly deteriorated since settlement is described in the draft of Chapter XVI of the Land Administration Manual, of which there is a copy in your office. I refer to paragraphs 574—579.

5. I know of hardly any rules dealing with special causes of deterioration. Rules were sanctioned at the last settlement of Jhelum for the remission of the demand on land injured by the spread of kallar shor or reh. These will be found in Appendix C to Mr. Talbot's Settlement Report.

BURMA.

Letter from the Government of Burma, No. 377-5 L-1, dated the 26th September 1908.

* * * * * * * * * * * *

5. Finally, I am to explain the arrangements now in force for ensuring an abatement of revenue in the case of deterioration of a holding during the currency of a Settlement and the steps now being taken to extend these arrangements.

It is unnecessary to discriminate between cases where the right to a reduction may be based simply on a deterioration in the nature of the holding and those in which it may be based on the ceasing of an improvement, previously effected, to be of utility. These have hitherto not been directly provided for in Burma except that in Upper Burma in the case of failure of irrigation-works, Direction 28 of the Upper Burma Supplementary Survey Directions contained provision for a reclassification by the Deputy Commissioner or, when so empowered by the Deputy Commissioner, by the Superintendent of Land Records or by the Subdivisional Officer, of lands irrigated at settlements which have since ceased to be irrigated. Amendments have been made to the Supplementary Survey Directions for both Lower and Upper Burma which provide for a reclassification of lands which have deteriorated from causes other than irrigation. These amendments provide that these powers shall be exercised only in exceptional cases where land is abandoned to a considerable extent and where the inapplicability of the classification adopted at settlement is clear beyond reasonable doubt.

The Government of India are aware that this Province enjoys an exceptionally liberal remission system (as a reference to Directions 49 to 70 under the Lower Burma Land and Revenue Act and to Rules 229 to 241 under the Upper Burma Land and Revenue Regulation will show) and that in addition the assessment may be materially reduced on land left fallow for certain reasons in (Lower Burma Rules 77 *ff.*) while in Upper Burma assessment is made only on land which has produced a matured crop.

In these circumstances the Lieutenant-Governor has not thought it necessary to adopt in this matter rules similar to those in force in the Punjab. His Honour believes that the changes now made in the Supplementary Survey

Directions, taken in conjunction with the rules regarding assessments and remissions, will fully provide prompt relief from over-assessment of holdings which have suffered deterioration since they were assessed.

* * * * * * * * * * *

CENTRAL PROVINCES.

Letter from the Chief Commissioner, Central Provinces, No. 280-XI-4-52, dated the 18th September 1908.

* * * * * * * * * * *

8. The Chief Commissioner has had a draft circular drawn up to give effect to the suggestions * * * in regard to the circumstances under which exemption from assessment may be withdrawn. The instructions contained in the draft circular, copy of which is appended, will ensure full effect being given to the wishes of the Government of India in respect of all the matters dealt with in the correspondence * *.

* * * * * * * * * * *

Revenue Book Circular Nos. 1-9.

Section 1. Serial No. 6

SUBJECT—*Exemption of Improvements from assessment.*

In the correspondence printed as an appendix, the Government of India sanctioned the exemption of improvements from assessment. The rules then laid down have been scrutinized and extended in accordance with the principles laid down in the Government of India's Resolution No. G-193-2, dated the 24th May 1906, in the Department of Revenue and Agriculture.

* * * * * * * * * * *

6. If an improvement ceases to be of use, relief is usually granted at the next revision of settlement by assessment of the land at the rates for unirrigated or unembanked land. In ryotwari villages, however, if a ryot is paying at a higher rate on account of irrigation (whether provided by himself or by the State) and irrigation permanently ceases to be available, the Deputy Commissioner will propose the reduction of the ryot's revenue to the rate payable on unirrigated land. In malguzari villages if a malik-makbuza or Government ryot (holder of escheated malik-makbuza land) is paying at the rate for irrigated land or if *sir* or khudkasht is assessed at irrigated rates, and irrigation permanently ceases to be available, the Deputy Commissioner should, in case of hardship, recommend the reduction of the revenue to the unirrigated rate or an abatement of revenue proportionate to the difference between the rental value of the home-farm at irrigated and dry rates. And in malguzari villages where tenants are paying at irrigation rates, if a permanent failure of the water-supply causes hardship, the Deputy Commissioner may recommend a reduction of revenue conditional on the reduction of rents paid at irrigation rates to dry rates, whether the tenants have applied for reduction under section 14 of the Tenancy Act or not. Provided that the failure of the water-supply be not due to the wilful neglect of the malguzar or to his applying the land to some other profitable use.

7. Similar action for reduction of revenue in the case of ryots, malik-makbuzas and tenants of affected villages may be taken when the quality of land on which revenue was assessed is permanently lowered by diluvion, deposit of sand, water-logging or other natural calamity beyond the cultivator's control.

AJMER-MERWARA.

Letter from the Chief Commissioner, Ajmer-Merwara, No. 1229-151 A-II, dated the 6th November 1911.

* * * * * * * * * * *

2. A draft of the rules revised accordingly is submitted for the approval of the Government of India.

3. To meet the case of permanent deterioration, it does not seem necessary to introduce into the rules a fresh class of calamity. But a paragraph has been inserted after Rule XI to the effect that when the Collector reported that the damage done was of a permanent nature, the Commissioner should have power up to Rs. 500 in any case to direct that the orders for remission should continue in force for any period up to the termination of the current settlement.

Rules for the remission and suspension of revenue in Ajmer-Merwara on the failure of crops by reason of physical calamities.

* * * * * * * * *

12. In all cases where the Collector reports that the damage done is of a permanent nature the Commissioner shall have power to direct that the orders for the remission of revenue not exceeding Rs. 500 in any one case shall continue in force for any period up to the termination of the current settlement. When it is proposed to exceed the limit of Rs. 500 in any one case the Chief Commissioner's orders should be taken.

* * * * * * * * *

COORG.

Letter from the Chief Commissioner, Coorg, No. 1620, dated the 31st October 1906.

* * * * * * * * *

3. *In regard to paragraphs 11 and 12.*—The existing Revenue Rule 250 does not cover all cases of deterioration of land, inasmuch as it provides for the revision of the current assessments of estates only and does not allow of the reassessment of individual holdings. An amendment of the rule is, therefore, necessary, and it is proposed to revise the rule as follows :—

" 250. (*a*) On the application of the land-owners or on the recommendation of the Commissioner the Chief Commissioner may order the current assessment of an estate or a holding to be revised, if, owing to calamity or season of other cause not above provided for, the profits of the estate or holding have been materially reduced.

" (*b*) In revising an assessment under this rule the Commissioner shall except in cases in which the Chief Commissioner may by special order otherwise direct, be guided by the principles and instructions which were followed when the last general assessment was made.

" (*c*) When the assessment of an entire estate is revised, the distribution of the land revenue over the holdings shall be revised in conformity with the revised assessment of the estate."

NORTH-WEST FRONTIER PROVINCE.

Letter from the Agent to the Governor-General and Chief Commissioner, North-West Frontier Province, No. 234 H., dated the 12th August 1907.

* * * * * * * * *

10. (4) Paragraph 12 of the Resolution calls for a report as to the existing arrangements for ensuring that when a holding deteriorates during the currency of a settlement from such causes as diluvion, deposit of sand, spread of salts,

water-logging or the failure of natural irrigation, relief shall promptly be given to the individual revenue-payer.

The most common forms of deterioration are those due to the action of river and hill torrents, *viz.*, diluvion and sand deposits. These are amply provided for in the di-alluvion rules which have recently been revised in the re-assessment operations in all districts but Peshawar, where very comprehensive rules had been framed at the last settlement. These rules provide for the remission of the revenue when the land is carried away or rendered unculturable and for its reduction when the land has been injured in quality. The periodical inspection of lands liable to action of the above kind is part of the revenue system and works smoothly and automatically. Some districts, *e.g.*, Hazara, heretofore had a local rule, that no relief was necessary unless the result would be to alter the revenue of the whole estate concerned by more than 5 per cent. This worked hardly in individual cases, and under the present rules all changes are taken into account.

11. (4) The forms of deterioration next in importance are (1) water-logging or spread of "reh" in badly drained tracts, owing to excess of flooding from canals or other sources; (2) failure of irrigation from canals, springs or hill torrents. Provision has been made in the existing settlements and revenue rules for giving prompt relief in such cases.

In Dera Ismail Khan where the cultivation mainly depends on hill torrents the supply from which is very uncertain practically the whole district has been put under the fluctuating system. In Peshawar where both the above influences come into play all villages liable to deterioration were classed as "insecure" at last settlement, and the di-alluvion rules were made applicable to them. So that account is taken of such changes periodically as if they were due to river action. Thus in 1902 a reduction of Rs. 2,066 was sanctioned in the revenue of 13 villages injuriously affected by water-logging, and a similar reduction was allowed to three estates where the irrigation from springs had seriously diminished. Circumstances in Bannu are similar to those of Peshawar. The irrigated area, 120,000 acres, is dependent on zamindari canals with temporary heads liable to be carried away by floods and often badly aligned. Hence water-logging in certain tracts and failure of supply in others are not uncommon. The question of improving the irrigation system is now under consideration, and will soon be referred to Government. Meantime in the assessments recently sanctioned in the precarious tracts—irrigated and unirrigated—the people have been given the option (of which so far they have not availed themselves) of accepting fluctuating rates, and provision has been made as in Peshawar, for the remission of revenue on land thrown out of cultivation by water-logging, deterioration of the soil or the failure or reduction of source of irrigation. In the two remaining districts, Hazara and Kohat, the irrigated area (10 per cent. in Hazara and 12 per cent. in Kohat) is comparatively small and liable to little alteration, and the unirrigated land is not subject to any special forms of deterioration beyond the usual seasonal fluctuations which are allowed for in assessing. No special rules have been framed, but the general principle of allowing for deterioration caused by a failure of the water-supply is acted upon.

12. (4) It seems desirable, however, that the liberal policy which the Government of India has now enunciated for dealing with such cases should be embodied in rules or circular instructions, and made more widely known to the subordinate establishment, and the revenue-payers. The present procedure for dealing with cases other than those due to river action, if strictly followed, is lengthy and cumbrous, and is, therefore, apt to deter the revenue officials from taking action until the deterioration has assumed serious dimensions.

Section 59 (1) (*e*)* authorises special assessments when the "Assessments require revision in consequence of the action of water or sand or of calamity of season or from any other cause." This is comprehensive enough, but the rules framed to give effect to it appear over-elaborate. Rule 217 deals with di-alluvion changes and the procedure requires no modification.

* Of the Punjab Revenue Act.

Rule 218, which deals with other forms of deterioration, runs as follows :—

" (1) On the application of land-owners, the Financial Commissioner, with the sanction of the Local Government, may order the current assessment of an estate to be revised, if owing to calamity of season or other cause not above provided for, the profits of the *estate* have been *materially* reduced." Clauses (*ii*) and (*iii*) authorise the Collector to revise the assessment on the lines on which the last general assessment was carried out, and to make necessary alterations in the distribution.

It is, I think, obvious, that this rule does not go far enough in the direction of the liberal policy which the Government of India has now accepted. The Collector should be allowed to take the initiative, and should do so not only when the profits of an *estate*, but the profits of one or more *holdings* have been materially reduced, and he should submit his proposals for the sanction of the Chief Revenue authority, who would only refer to Government in cases where large reductions, or some question of principle were at stake. The circumstances which would justify an abatement of the revenue for the remaining term of the settlement or till the land has been restored to its former condition, can be fairly easily defined; in fact all that would be required is the extension of the di-alluvion rules, the working of which is readily understood to other forms of deterioration which have not been allowed for in the last general assessment.

* * * * * * * * *

*

*

APPENDIX B.

[*Referred to in the Answer to Question 2.*]

Statement showing the total number of all descriptions of goods vehicles added to the stock of Indian Railways during the years 1908 to 1913 and the number under supply.

Railways.	Number added in—						Total number added the 6 years, during 1908 to 1913.	Number under supply to d to.
	1908.	1909.	1910.	1911.	1912.	1913.		
5' 6" Gauge.								
Bengal-Nagpur	1,712	503	669	260	225	462	3,851	1,060
Bombay, Baroda and Central India	471	772	720	421	554	586	3,533	559
Eastern Bengal	511	88	18	19	164	864	1,664	520
East Indian	1,072	1,436	989	—27	311	1,226	5,007	9,897
Great Indian Peninsula	782	610	500	678	728	426	3,724	1,511
Madras and Southern Mahratta	57	192	51	2	...	1	323	150
Nizam's Guaranteed State	325	8	—8	—1	1	104	434	310
North-Western	2,551	3,783	114	673	1,887	1,804	10,262	2,385
Oudh and Rohilkhand	369	253	200	...	259	190	1,271	960
South Indian	31	77	82	11	16	70	287	70
Total	7,901	7,672	3,369	2,086	3,645	5,733	30,356	18,222
5' 3½" Gauge.								
Assam-Bengal	102	399	84	68	—8	100	765	1,078
Bengal and North-Western	269	260	190	66	377	927	2,109	310
Bengal Dooars	...	...	...	...	...		...	3
Bhavnagar	...	...	...	...	20	..	20	...
Bombay, Baroda and Central India	151	152	86	55	139	240	823	140
Burma	413	450	104	331	412	81	1,791	257
Dibru-Sadiya	110	60	6	20	...	...	196	...
Eastern Bengal	—18	165	37	179	394	59	816	626
Gondal-Porbandar	...		...	...		...		...
Hingoli Branch and Hyderabad-Godaveri Valley	...	...	—1	99	...		98	26
Jamnagar	...	...	...	...	...	...	...	...
Jodhpur-Bikaner	63	78	61	91	45	275	613	248
Junagad	...		...	20	50	...	70	...
Madras and Southern Mahratta	576	8	97	239	3	36	959	183
Morvi	2	...	...	37	...	...	39	2
Rohilkund and Kumaon	...	26	210	...	6	257	499	153
South Indian	6	...	27	126	60	71	290	210
Udaipur-Chitorgarh	...	8	...	...	8	...	16	...
Total	1,674	1,626	901	1,351	1,506	2,046	9,104	3,236

S. G. P. I. Delhi.—No. 161 L. D.—15-1-14—750.