

Thursday, 19th March, 1914

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS
1914
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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 INDIAN COUNCILS ACTS, 1861 to 1909
(24 & 25 Vict., c. 67, 55 & 58 Vict., c. 14, AND 9 Edw. VII, c. 4).

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on
Thursday, the 19th March, 1914.

PRESENT :

The Hon'ble SIR HARCOURT BUTLER, K.C.S.I., C.I.M., Vice-President, *presiding*,
and 52 Members, of whom 46 were Additional Members.

QUESTION AND ANSWER.

The Hon'ble Mr. Monteath asked :—

(a) Will Government be pleased to state whether they have received a memorial addressed to His Excellency the Viceroy, dated 29th March, 1912, from the Calcutta Trades Association, praying that the Civil Procedure Code, 1908, may be amended so far as necessary to render the pay of all officers serving in India, of whatever service or in whatever employment and whether belonging to the British or the Indian Army, attachable to the extent provided in section 60 of the Code? Amendment of Civil Procedure Code so as to render the pay of all officers serving in India attachable to the extent provided in section 60.

(b) Has the attention of Government been drawn to a recent decision of Mr. Justice MacLeod in the Bombay High Court, in which it was held that an officer in the Indian Army was entitled to receive his pay without any deduction and that an attachment levied thereon may be raised?

(c) Is it the intention of Government to take steps to effect the end sought to be attained by the Calcutta Trades Association; and, if so, what steps, if any, have been taken in the matter?

His Excellency the Commander-in-Chief replied:—

The replies to (a) and (b) of the Hon'ble Member's question are in the affirmative and negative, respectively. The question of amending the law on the subject of the attachment of the pay of military officers serving in India has been under the consideration of Government, who are addressing the Secretary of State on the subject."

[*Raja Kushal Pal Singh ; Mr. Walsh.*] [19TH MARCH, 1914.]

RESOLUTION RE RECOMMENDATIONS OF DECENTRALIZATION COMMISSION WITH REGARD TO MUNICIPALITIES, ETC.

(Continuation of the discussion on the Resolution moved by the Honourable Mr. Surendra Nath Banerjee at the meeting of the Council held on the 18th March, 1914.)

The Hon'ble Raja Kushal Pal Singh :—“ Sir, I beg to point out that almost all the reforms advocated by the Hon'ble Mover have been adopted by the Government of the United Provinces. I am the Chairman of a Municipality. I can say from my personal experience that even in financial matters the liberty of action is not unduly interfered with. Non-official Chairmen have been appointed in all those Municipalities where unfavourable local conditions or special obstacles do not exist. The work of the non-official Chairmen has been commendable. The replacement of official Chairmen by non-officials has tended to rouse local interest and stimulated non-official activities. As a proof of this assertion I quote the testimony of no less an authority than His Honour the Lieutenant-Governor of the United Provinces. I quote from the Resolution dated the 4th January, 1913 :—

With one exception it is reported that satisfactory work has been done by non-official Chairmen, whom the Commissioner of Lucknow Division characterizes as intelligent, interested in their work and most ready to take advice. The Lieutenant-Governor recognizes the encouraging aspect of the results and again acknowledges the public spirit of these gentlemen and the services they have rendered at the sacrifice of their time and sometimes of their private business.

“ At least three-fourths of the members of the District Boards in the United Provinces must be elected, except in a few backward tracts. In our Provinces Sub-District Boards were abolished some years ago.

“ As regards village sanitation, experimental advances have been made in several districts towards the control of village sanitation by committees of the residents themselves.

“ The rule 45 given on page 265 of the United Provinces District Board Manual runs as follows :—

The Board shall if possible form for each Board school a local Committee of three or five of the residents of the neighbourhood, and request this Committee to supervise and encourage the school—

- (1) by endeavouring to increase the enrolment ;
- (2) by insisting on regularity and punctuality of attendance by teachers and scholars ;
- (3) by providing or recommending necessary improvements ;
- (4) by assisting the Board in fixing the fees fairly leviable ;
- (5) by arranging locally for an annual distribution of prizes.

The Hon'ble Mr. Walsh :—“ Sir, with reference to the remarks which the Hon'ble Mr. Surendra Nath Banerjee has made regarding the number of Municipalities in the province of Bihar and Orissa in which the Chairmen are elected and in which they are appointed by Government, I should like to invite attention to the fact as noted in the statement and as also mentioned by the Hon'ble Mover, that, out of the 42 Municipalities which have nominated Chairmen, eleven have power to elect their own Chairmen, but instead of exercising the power, they requested Government to appoint a Chairman, and Government in every case complied with their request.

“ Of these Municipalities, seven are the head-quarters of important districts, namely Arrah, Chapra, Motihari, Muzaffarpur, Bhagalpur, Monghyr, and Purnea, in each of which the Municipalities requested Government to appoint the District Magistrate as their Chairman.

“ It may be suggested that official pressure may be brought to bear upon the Municipal Commissioners to apply to Government for the appointment of the District Magistrate. I have personal knowledge in regard to three of these towns and can say that such is not the case, but that the request was

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the spontaneous request of the Municipal Commissioners who considered that the District Magistrate was the most suitable person for the post of their Chairman. I would mention that the seven head-quarter towns, whose Municipal Commissioners have requested Government to appoint the District Magistrate as their Chairman, are large and important towns whose Municipal Commissioners have representative men of all sections of the community amongst their members, including, in some cases, members of the Provincial Legislative Council.

"The remaining four Municipalities are Sub-Divisional Head-quarters, in which the Municipal Commissioners similarly requested Government to appoint the Sub-Divisional Officer as Chairman, and in which also their request was spontaneous, and in each case the Local Government complied with their request.

"I should like also to make a few remarks with regard to clause (d) of the Resolution, namely, that village *panchayats* should be formed where local circumstances and experience permit with power to carry out projects regarding village sanitation, village schools and minor village works.

"Although the village *panchayat* formerly existed throughout India and was an essential part of its social organization, the Hon'ble Sir Gangadhar Chitnavis has told us that it no longer exists in the Central Provinces.

"In Bihar and Orissa also, except amongst the aboriginal races of Chota Nagpur and the Sonthal Parganas, the village *panchayat* has ceased to exist; and I may add that it has also ceased to exist in Bengal, so far as my personal knowledge of a considerable portion of that Presidency extends. Nor do I think that in the entirely changed social conditions of the present day, it would be possible to resuscitate the state of society that formerly rendered the separate government of every village by its own village *panchayat*, a possibility.

"The place and functions of the former *panchayats* have, however, to some extent been provided by the Union Committees, which in Bihar and Orissa, and also in Bengal are provided by the Bengal Local Self-Government Act.

"The Hon'ble Mr. Banerjee has referred to the smallness of the number of Union Committees at present existing in Bihar and Orissa. It is true that the number is at present small, but it is likely to be increased.

"At a *Sanitary Conference* for the province of Bihar and Orissa held at Ranchi in August last, it was the unanimous opinion that the system of Unions under the Local Self-Government Act, is particularly suitable for places, such as sub-divisional head-quarters, railway bazaars and exceptionally large villages which are not large enough to be made into municipalities under the Municipal Act.

"It was agreed that experimental Unions should also be formed in other parts of the *mufassal*, and that in this case it would ordinarily be convenient to take as the Union the villages which have been grouped together for *chaukidari* purposes."

The Hon'ble Mr. Madhu Sudan Das:—"Sir, the Hon'ble Mr. Banerjee, in moving the Resolution yesterday, referred to Lord Morley's despatch, which he said should be considered as the charter of the reformed and enlarged Councils. That despatch is a unique document, because it contains reference to a policy which was enunciated in 1882 by the Government Resolution of that year. It also refers to the fact that though the policy was enunciated in 1882 it was not acted up to till the date of the despatch of Lord Morley. It then goes on to discuss the causes why the policy was not given effect to, and formulates instructions for the guidance of this Government in giving effect to that policy in future. Sir, I beg permission

[*Mr. Madhu Sudhan Das.*]

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to refer to a certain portion of the despatch which contains reference to the Resolution of Government of 1882.

'It is not primarily,' they say, 'with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular education.' There appears to be great force in the argument that so long as the chief executive officers are as a matter of course chairmen of the municipal and district committees, there is little chance of these committees affording any effective training to their members in the management of local affairs or of non-official members taking any real interest in local business.

"Then it goes on to discuss why this policy has been a failure. 'If local self-government has so far been no marked success as a training ground, it is mainly for the reason that the constitution of the local bodies departed from what was affirmed in the Resolution to be 'the true principle'—that 'the control should be exercised from without rather than from within.' It goes on to show the reason why it had not proved a success, and then it proceeds to say that 'it would be hopeless to expect any real development of self-government if local bodies were subject to check and interference in matters of detail, and that 'the respective powers of Government and of the various local bodies should be clearly and distinctly defined by statute so that there may be as little risk of friction and misunderstanding as possible within the limits to be laid down in each case.'

"We find here a Resolution of the Government of India which was re-iterated and re-affirmed in the memorable despatch of Lord Morley, and it contained directions for the future guidance of this Government. One of these directions was that there should be a statute which should clearly lay down the limits of power of interference, and prescribe the duties of the executive officers and of local bodies. This is the place where one feels inclined to ask this question as to whether, since the date of the despatch, any statute has been enacted to carry out this policy. Then, referring, in an earlier part to the Imperial and Provincial Legislative Councils, Lord Morley said, with reference to Lord Minto's suggestion, 'I gather, however, from your despatch of 21st March, 1907, that you would at that time have preferred, as Lord Lansdowne had done in 1892, to build up the higher fabric on the foundation of the Provincial Council.' So it is clear to any one who reads this despatch through that the idea was to make a whole connected system having at its base these local bodies and at the top of the edifice the Imperial Legislative Council, the Provincial Legislative Council occupying an intermediate position.

"Sir, if this Council is really meant to be useful in the way of being a body that will co-operate, or at least so that the non-official members of this Council will co-operate and their co-operation will be helpful and useful to Government, it is absolutely necessary that the foundations should be looked to. Very often non-officials make suggestions that do not find favour with Government; owing to lack of administrative experience. It may be that when we suggest any change on account of our want of experience we are not able to take into account the difficulties which a particular theory when applied in practice would create. No doubt non-officials are at a disadvantage so far as experience goes. But if it is intended to make their co-operation effective and useful, every attention should be paid to the foundations; and these foundations are in the local bodies, the municipalities and district boards. Lord Morley says in this despatch 'The encouragement of local self-government being an object of the highest importance in the better organization of our Indian system, it remains to be considered how far in each of the provinces it will be desirable to create a department for dealing exclusively with these local bodies, guiding and instructing them and correcting abuses in form analogous to the operations of the Local Government Board in this country. That however is a detail, though a weighty one, in a question on which, as a whole I confidently expect that your Excellency will find much light in the forthcoming Report of the Royal Commission on Decentralization.' So this despatch contains a reference to the Report of the Decentralization

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Commission. Since the date of this despatch the Report of that Commission has been published ; the report is dated the 25th February, 1909, and one of the Members of the Royal Commission and the Secretary are Members of this Council. The recommendations of the Royal Commission ought to be considered as having very great authority, or, if I may use such an expression, double authority ; first they are the recommendations of a Royal Commission and then they are referred to in a despatch which may be considered as the charter to this enlarged Council. When speaking on the Resolution before this Council yesterday, the Hon'ble Mr. Cobb pointed out to us that want of time and want of experience were the reasons why these municipalities could not command non-official chairmen. I beg to ask, as regards that part of his argument based on want of experience, is it not really making the gravamen of a charge against the people what really is neglect of duty on the part of Government ? The despatch clearly shows, and the Resolution of 1888 clearly shows, that these local bodies should be considered as training ground, that they should first of all be maintained as instruments for political and popular education and that they were not instituted with a view to the improvement of the administration ; and now we are met with the argument that because there is no efficient administration to be had of the non-official public, therefore they should not have the position of chairmen of these institutions. That, Sir, in my humble opinion, is really making out of the neglect on the part of Government the gravamen of a charge against the people. What was really meant to be a training ground is now considered as the battlefield itself, where it is proposed to test the bravery and efficiency of the soldier. Then the Hon'ble Mr. Cobb also referred to paragraph 869 of the Commission's Report, and there read out that the Bombay Government, while keeping the executive power in the hands of an experienced official, provides a dignified post as a reward or incentive to public spirit and interest in municipal affairs. This is one of several paragraphs which come under the heading 'Presidency Municipalities.' This does not refer to municipalities generally, while the Resolution deals with municipalities generally. It is very easy to distinguish between what is required of a chairman in a presidency municipality like that of Bombay or Calcutta, and a chairman who presides over a municipality with a smaller income in a small town with a much smaller population. There is at the end of the—"

The Hon'ble the Vice-President :—" I must remind the Hon'ble Member that he has got one minute more."

The Hon'ble Mr. Madhu Sudan Das :—" Will you give me two minutes, Sir."

The Hon'ble the Vice-President :—" Very well, then ; two minutes."

The Hon'ble Mr. Madhu Sudan Das :—" Referring to the figures which were given to the Hon'ble Mr. Banerjee showing the number of nominated chairmen, I find that the number of elected chairmen is smallest in Bihar and Orissa. With reference to that the Hon'ble gentleman on my left has given an explanation. I beg to ask, has the spirit which underlies the despatch, that is to say, to induce the people to take an active part in the administration of local bodies, been exercised ? The Hon'ble Mr. Walsh said that the Government was asked, and they complied with the request. The Report says that Municipal Councils should be able to delegate any of their administrative functions to individuals who may include persons not on the Council. If the District Magistrate was so minded, he could remain outside the Council and advise the chairman, if he was wanting in administrative experience, what to do ; that would have been really following the spirit of the despatches and the recommendations of the Decentralization Commission."

[*Rai Sri Ram Bahadur ; Mr. Abbott.*] [19TH MARCH, 1914.]

undertake municipal work, because they are generally professional men who cannot spare time to devote to it. But, experience has shown that there are persons who will undergo self-sacrifice and will work for the public. The time, therefore, has come, when, except in certain circumstances, a free hand should be given to the members of municipalities to elect their own chairmen.

“Sir, the Hon’ble Mr. Cobb said yesterday that the practice which is followed in Bombay should be introduced in all municipalities. That practice is, that there is a nominal chairman who is a sort of mouthpiece or representative of the members of the committee, and there is another officer who has all the executive work in his hand. But the Report of the Decentralization Commission does not go so far. It merely says that in large cities perhaps it might be useful to introduce that practice, but as regards the municipalities which are not large enough the report is silent, or rather it recommends the election of non-official chairmen. Therefore the Bombay practice is one which, if introduced, ought to be adopted for big municipalities where we cannot find a non-official who would devote all his time to the work of the municipality.

“Then comes the third point, *i.e.*, that District Boards should contain an elected majority. So far as the United Provinces are concerned, except in the Hill Tracts, *i.e.*, the three districts of the Kumaon Division, the rest of the district boards have got that privilege. More than three-quarters are non-officials, and the rest are officials. It shows that we are far ahead of other provinces in this respect, and we are thankful to Government for it. I must tell the Council that there are no local boards in the United Provinces now. Formerly they did exist, but experience showed that they did not do any useful work and they were abolished in 1906.

“We now come to the fourth part of the Resolution, *i.e.*, the constitution of village *panchayats*. Our Local Government has been doing something towards the attainment of that object. Some districts have been selected in which it has been introduced; it is in an experimental stage: But regarding the establishment of *panchayats* in all places where they can be established, I am of opinion that it should be done. My Hon’ble friend the Maharaja of Nashipur has told us that the *panchayat* system prevailed in the rural tracts of India in former times, but the circumstances have changed now, and in his opinion they should not be reconstituted. I do not agree with that view. We have the elements for forming these *panchayats* in almost all the villages in India, and especially in the United Provinces. It is only the fostering care of Government that is required to revive them and they will spring up in a very short time. Of course I do not say that the thing should be undertaken at once: it is a matter in which we must proceed slowly and cautiously and be guided by the light of experience which might be gained in the course of time. We have something even now like this in the villages at present. In matters relating to their village festivals and other things connected with their village the elders assemble together and collect subscriptions. This shows that they have the capacity to act collectively on certain occasions.

“That shows that there are the germs, and it is only the nourishing of the plant that is required, and I hope that the Hon’ble Member in charge of Education will take measures to secure the establishment of village *panchayats*.

“With these remarks I support the Resolution.”

The Hon’ble Mr. Abbott :—“Sir, my experience of municipalities and district boards is confined to the United Provinces, where I have had the honour to represent the people for many years as an elected and nominated member and vice-president. The removing of Government control, I consider, would be disastrous and dangerous, as it would lead to a state of chaos. The average member is not educated up to the necessary standard. What does he know of sanitation, public works, improvements, finance? Practically *nil*! Many of the members cannot read or write English.

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“ I will read to you a few lines from the *Morning Post* of the 18th instant, with reference to the Lahore Municipality :—

“ The eagerness of the communities to get their representatives into responsible posts in India seems to be as strong as ever, judging from the state of municipal affairs in the capital city of the Punjab and elsewhere. As our Lahore correspondent informed us the other day a deadlock occurred in the Municipality owing to the fixed determination of the Hindu community to have one of their co-religionists appointed as Assistant Secretary, and an equally determined effort on the part of the Mohammedan members on the Committee to get in one of their own creed. ”

“ We might wake up one morning to find our beef and bacon supply out off. The appointment of a non-official chairman in middle and large-sized municipalities cannot be too strongly condemned. I consider a municipality with a non-official chairman as a ship on the ocean without a rudder, or with a makeshift rudder. A chairman requires training; he requires knowledge of law, advanced sanitation, public works, finance, etc., and should be one born to command, and with a great deal of energy. If he is not an expert in the above, he must be in a position to demand expert advice at any time and any place. Who but the official can do this? Certainly not a non-official. I am afraid I can say without hesitation that there is no one in this Council of the non-official members including myself, who would make an ideal chairman. If such is the case, what can be expected outside? We would be weak in one or other of the most necessary qualifications, as I said before, in sanitation, water works, finance, public works, or law, and we would not have the time daily at our disposal to do justice to the position. It is not an armchair office; it is one which requires the very best of man. It is looked upon in many places as an armchair situation, a signing machine or a social position. I repeat that it is a dangerous experiment. In no time the whole of the machinery and the people of that town with the chairman will be in the hands of the subordinates and at their mercy, such as the secretaries, overseers, sanitary inspectors, and run by one or all these subordinates—a pitiable state of affairs. To remove the control of the Commissioner would be cutting away the advice and experience of many many years. I can only compare it to the sudden death of father and mother in a very large growing family. I would suggest that we learn to creep before we run.

“ I am whole heartedly with the Hon'ble Mr. Cobb and the Hon'ble Mr. Walsh, and I beg—”

The Hon'ble Mr. Walsh :—“ Sir, may I rise to an explanation I never said I was in favour of an official chairman, I merely stated a fact; explaining that the reason why a large number of municipalities in my province had a chairman appointed by Government was that there were eleven municipalities which had the right of electing their chairman who for their own reasons in each case, considering their district magistrate to be the most suitable person to appoint as their chairman, asked Government to appoint him. I never for one moment would say that a non-official is not fit to be a chairman of a municipality. I have had a very considerable experience of municipalities both in Bihar and Orissa and also in Bengal and have known many very able non-official chairmen.”

The Hon'ble Mr. Abbott :—“ I am afraid the Hon'ble Member has misunderstood me. I simply mentioned the Hon'ble Mr. Walsh and the Hon'ble Mr. Cobb and I said I was with them in all that they said. I suggested that we should learn to creep before we run. I will continue. I am with the Hon'ble Mr. Cobb and the Hon'ble Mr. Walsh in all they have said and beg hon'ble non-official members will follow a great deal of what they have said. It is a very pleasant duty and a great honour to be Chairman of a municipality in the smallest of towns and one is naturally looked upon as a great *bahadur*. It is because of the love and respect the members have for the official that they do and have done so much good work. With a

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non-official chairman it is not so and parties at once take sides and a very unfortunate position arises with a Mohammedan or Hindu chairman. Official members here could give us many serious tales of non-official chairmen, but they have spared our feelings. The United Provinces require nothing more ; they have too much now. I therefore oppose this Resolution."

The Hon'ble Mr. Vijayaraghavachariar:—"Sir, I desire to make a few remarks on the Resolution. The Resolution asks for the adoption by the Government of India of certain recommendations of the Royal Commission on Decentralization, and the motion was sustained by a statement brilliant in character as usual. If I may venture to say so, the mover surpassed himself in making the statement yesterday. But brilliant as the statement was, it strikes me the motion is capable of admitting some criticism directed against it.

"The Resolution may be divided into two parts, namely, the object the Hon'ble Member has in view and the means for attaining it. So far as the object is concerned, it strikes me the problem of local self-government is no longer a controversial one. I believe the leaders of the people and the Government are at one so far as the end is concerned. Such differences as there may exist relate solely to the method and rate of progress in regard both to the constitution of local boards and their functions. On the one hand the popular leaders are apt to regard these institutions more from the point of view of popular and political education. On the other hand the Government and Government officers are too apt to approach the solution of the question from the standpoint of efficiency alone, of which we have had an apostle in the Hon'ble Mr. Abbott this morning. If the rate of progress is arrested at all, the arrest is due, whenever fresh efforts are made, to our not being able to reach a compromise between these two aspects of view. Be that as it may, I am in perfect accord with the Hon'ble Mover of the Resolution so far as the end is concerned. Nay, I go even further than he. For instance, sub-division (c) of the Resolution asks that the members of the district boards may be elected by the non-official members of the sub-district boards. I am one of those who believe that there is no magic in the mere word 'election' as distinguished from the word 'nomination.' If election means anything at all in this connection, it must mean that the rate-payers must have a voice in the raising of the rates and in the administration of the rates. And election must therefore necessarily mean here election of the representatives of the rate-payers by the vote of the rate-payers. Now most of these non-official members in sub-district boards are nominated members themselves and sub-district boards are everywhere highly and excessively controlled. I cannot understand therefore how an election, even an election of the majority of the district boards, by these non-official members of sub-district boards would very much alter the situation as it now exists.

"But the important question to consider is the means proposed in view to achieve the end.

"The Resolution says that this Council recommends to the Governor General in Council the *adoption* of the recommendations of the Royal Commission stated in it. Now what is this adoption for? We must examine this demand for the adoption by the Government of India in the existing state of things and in the light of the prospects held out to the people of this country touching provincial autonomy. I believe that this demand is open to two objections. The first is what is the effect of this adoption? Now whatever reform is possible and practicable in the progress of local self-government is to be attained and may be attained by laws enacted by the local legislatures. The local legislatures, under the latest reform scheme, have a non-official majority. Now I wish to know—and the brilliant statement of the Hon'ble Mover has not shown the way—how these non-official majorities are to be asked or, it may be, forced into making a law suited to special requirements, as asked for by this Resolu-

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tion. Therefore I cannot at all understand the Hon'ble Mover's Resolution. He has complained, and rightly complained, of circulars of Local Governments controlling rural boards. As a remedy he asks for a circular from the Government of India to control both the local Executive Governments and the local legislatures. Surely, it seems to me, the remedy is much worse than the evil he complains of. The Government of India is federal in conception and federal in theory. It has no municipalities, it has no district boards, it has no sub-district boards, it has no villages to organize. Therefore, what is the object of the Government of India expressing a formal adoption of the recommendations of the Decentralization Commission? I cannot understand it. Therefore, I respectfully submit, that this Resolution is out of order before the Government of India.

Now we have been trying, and trying so long, for more and more local autonomy, and my friend the Hon'ble Mover, more than any body else, has been not only working for it, but only the other day he was in raptures about it in opposition to the distinguished Finance Member. He said that the argument he based upon the memorable passage in the despatch of August, 1911, in respect of provincial autonomy was not traversed by the Hon'ble the Finance Member, and he provoked him into a special reply. There is some grave inconsistency, therefore, in the Resolution of the Hon'ble Mover in asking the Government of India to interfere in the manner just advocated.

"Now I wish to know what would be the effect of the adoption of this Resolution? Now we have to go before the local legislatures. Either the majority there will adopt the resolutions or they will not. If they will not adopt the resolutions, what is the course open to this Government. But if they will, why trouble this Government, why come to this Council? Is he afraid that the local legislatures will not except these recommendations? Is he afraid that the local administrations will veto them? If so, it is then time, and not till then, to come to the Governor General and to this Council. At this stage, therefore, I cannot understand the force of the argument in support of the prayer that there should be a further step taken in the advance of local self-government in the light of the recommendations of the Decentralization Commission by asking this Government to adopt them. The debate yesterday and to-day has shown that one province at least has adopted some of the recommendations of the Decentralization Commission without any suggestion or any pressure from this Government, and without any resolution passed by this Council, *viz.*, the Government of the United Provinces, as the Hon'ble Mr. Cobb told us yesterday. Therefore, it seems to me that the leaders of the people may and ought to approach the Local Governments and legislatures to adopt these recommendations. I am therefore unable to understand the object of asking the Government of India to adopt this Resolution.

"My second reason is a broader and deeper one. I have said that the Government of India is federal in conception and origin. I shall make my grounds more clear. Sir, we all know that the high office of Governor General was created so long ago as 1772 by an Act of Parliament, the Regulating Act, 13 George 3, c. 21. Now at that time there were four administrations, I cannot say Governments. They were partly mercantile and partly political; so they may be termed politico-mercantile Governments, but all independent of each other, they were, the President in Council in Bengal, the President in Council, Bombay, the President in Council, Madras, and the President in Council of another place, Bencoolen. Now, under the Regulating Act of 1772, the only power of superintendence that that Act gave to the Governor General of Bengal (not of India yet) was in reference to the defence of the country and control of diplomatic relations. The other Governments, now the Local Governments, were forbidden from going to war except in cases of imminent danger and from entering into treaties with Native Princes. Thus was, I may say, federal government started in India. Some four years later it was that federal government was started in America. Thus the conception of a federal

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government in India was anterior to the conception of federal government in the United States by some four or five years, although the two systems were similar in principle and constitution.

"In the course of some 90 or 100 years, alike by Statutes, by departmental traditions and by despatches from the Secret Committee of the Court of Directors, Local Governments were gradually deprived of their independent power until at last they were deprived even of their power of legislation which they had, so that they became mere departments of the Government of India. About ninety years after the Regulation Act, statutory decentralization of the Provinces began with the Indian Councils Act of 1861, which restored their legislative powers and, later on, departmental decentralization, under the auspices of Lord Mayo's Government. Now we need not go further. The progress was kept up more or less steadily, depending partly upon the personnel of the Indian and Local Governments and partly on other circumstances. On the whole, however, the tendency has been towards decentralization, until we reach the memorable despatch of August, 1911, a despatch which I believe was unanimously signed by His Excellency Lord Hardinge and his colleagues. Now that despatch clearly lays down the principle as to what should be the ultimate autonomy of the provincial Governments. The ultimate effect is that each Provincial Government will be left to itself except in cases of misgovernment. Now I believe the question the people, their representatives and *quasi*-representatives in Councils ought to ask themselves is "Do we want this autonomy or do we not want it? If we do not want it, then I cannot understand the cry and the necessity for the creation of Governors, of Executive Councils, of Indian members of Executive Councils and of High Courts in each province. The sooner we do away with these the better. It would be far more economical for the whole country to be divided into collectorates and placed under groups of Commissioners if you like. If on the other hand, you do want local autonomy, all that we say or do should tend towards development and perfection of that autonomy. Inconsistent conduct is what I cannot understand. For my part I have made up my mind to so act and to confine my conduct here towards that ultimate goal foreshadowed in the despatch. Now to this despatch I will fondly adhere, if for no other reason than that it has begun to receive hostile interpretation in view to narrow and whittle it down. Whenever such a despatch begins to receive hostile interpretation from men like Sir John Rees, I begin to think there is something very good in it for the people."

The Hon'ble the Vice-President:—"Order, order! The Hon'ble Member is covering a very wide range of subjects in his speech."

The Hon'ble Mr. Vijiaraghavachariar:—"I only give reasons why I am fond of provincial autonomy as outlined in this great despatch.

"I fear this passage has to be saved from authoritative interpretation and that it would be injudicious to start any discussion calculated to provoke frequent interpretations of this passage. I therefore deprecate the putting of any questions or moving any resolutions in this Council which will have the effect of compelling the apostles of bureaucracy endeavour to give an interpretation of this divine passage, which I for one would not now like to see done. The passage needs a rest cure at this stage.

"That is all I wish to say about this. The Resolution, in my humble opinion, does not quite coincide with peoples' aspirations and with hopes which are so often held out to the people of this country as the ultimate goal of their national life. We expect resolutions and questions in this Council, and discussions, financial or other, shall be animated, if we accept the theory of provincial autonomy at all, as foreshadowed in this despatch, shall be animated by a due regard to this national ideal and—"

The Hon'ble the Vice-President:—"The Hon'ble Member's time is finished."

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The Hon'ble Mr. Vijiaraghavachariar :—“ Very well, Sir. I have nothing more to say. All that I say is, taking the Resolution as a whole, I respectfully submit that the end and the means are inconsistent, the means proposed is inconsistent with the national aims and aspirations of the people of this country.”

The Hon'ble Pandit Madan Mohan Malaviya :—“ Sir, I give my hearty support to the Resolution which is before the Council. As regards the objections which have been raised, I will first take up the one of principle which has been pressed with his usual ability and eloquence by my friend the Hon'ble Mr. Vijiaraghavachariar. I am entirely at one, Sir, with my friend in desiring that there should be a continuous devolution of power from the Government of India to the Local Governments in all matters of domestic administration. I have long advocated it, and I hope the day is not very far distant when Local Governments will have much more independence and will be able to initiate measures of reform to a much larger extent than they can at present. When that day comes I shall join with the Hon'ble Mr. Vijiaraghavachariar in deprecating the putting forward of any Resolution like the one which has been put before the Council by my friend the Hon'ble Mr. Banerjee to-day. But that day is not yet, and I fear, Sir, it will be some time before we arrive at the stage when the control of the Government of India in the matter of supervising and directing the activities of Local Governments will be circumscribed to the extent to which it was foreshadowed in the memorable despatch of August, 1911. I do not doubt that that day will come, but until it comes, it is our duty to put forward before the Government of India matters in which, without reflecting on the attitude of the Local Government, without in any way suggesting that the Local Governments are apathetic, indifferent or hostile to the proposals put forward here, we feel that the activities of the Local Governments might be stimulated by drawing the attention of the Government of India to what has not been done or to what might have been done at a quicker pace than what has actually been achieved.

“ That, Sir, deals with the objection of principle which has been raised. Other objections have been raised of a different character, and they proceeded from the Hon'ble Mr. Abbott. Before I go on to deal with the Resolution, I think it as well to deal with the objections raised by the Hon'ble Mr. Abbott. Mr. Abbott has drawn a very melancholy picture of the state of affairs which might be ushered in if the recommendations of my Hon'ble friend were adopted, if there were a non-official Chairman—a Hindu or a Mohammedan in charge of the administration of municipal affairs of a large city,—the water supply might be cut off, the lights might be extinguished, and many other horrors, which Mr. Abbott has been considerate enough not to describe to us, might come into existence. I must be thankful to him—and the whole Council must be thankful—that he did not draw a more harrowing picture before us. Does the Hon'ble Member not know that such a large municipality as that of Poona was for some years administered, in the capacity of Chairman, by one of our honoured colleagues, the Hon'ble Mr. Gokhale? Does he not know that the Fyzabad Municipality—not a small municipality in the United Provinces—has been administered by a non-official chairman—a Hindu—for nearly 25 years, with none of the evil results which Mr. Abbott's imagination has conjured up? I regret to think, Sir, that the Hon'ble Member has given expression to such extremist views regarding the progress of this scheme for delegating power to the people for the administration of their local affairs. Let him be assured that none of the evils which he has imagined will occur if the recommendations, which have, on their side, the weighty authority of the Royal Commission on Decentralization, are adopted; for we, on our side, feel sure that they will be adopted in spite of the fears, the ill-based fears, which the Hon'ble Member has expressed.

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"The Hon'ble Member has referred to a letter published by some writer in some newspaper in which it has been stated that on a recent occasion, when there was a vacancy to be filled up in a certain municipality, the Hindu members of the board tried their best to get a Hindu candidate appointed, and the Mohammedan members did the same for a Mohammedan candidate. Let us assume that this is true. We are all, Hindus, Mohammedans and Christians, human beings and all liable to err. But I think, Sir, many official and non-official members could recall instances in which people, knowing a particular candidate to be honest and efficient have done their best, without any narrow-minded motive, any narrow-minded consideration of which any gentleman need be ashamed, to press the claims of that candidate, whether he was a Hindu, a Mohammedan, or a Christian. The mere circumstance that there are two sets of persons, each trying to press the claims of the candidate, whom it considers to be better than the other, does not necessarily indicate the existence of interests which cannot be reconciled with the public good.

"Then, Sir, the Hon'ble Mr. Abbott has urged that if a non-official Chairman is appointed he will not be able to command expert advice. He has claimed that none but an official can command expert advice. 'Who but an official can command expert advice?' asked he. 'Not a non-official certainly,' was his own answer! But the Hon'ble Member is entirely mistaken. Non-officials account for 98 per cent. of the population: they form the great bulk of the community. Officials are merely the servants of the community—honoured servants, trusted servants; but servants all the same. They derive their power and influence by reason of their being public servants. But, Sir, many a man among the general public, who has not the honour of being an official, commands expert advice to an extent evidently not conceived of by the Hon'ble Member. There are large engineering firms, entirely unofficial, large railway companies, large business concerns, in Calcutta, Bombay and Madras, entirely unofficial, which command expert advice fully to the extent they require, and as much as any official or body of officials in the country.

"Well, Sir, I will leave the Hon'ble Member with only one further remark. He asserted that, including himself, there is not one non-official member of this Council who, in his opinion, is fit enough to be chairman of a municipal board. I have myself not had the honour, Sir, of serving as a chairman of a municipal board. But I have served as a senior vice-chairman. And I think nothing but unreasoning prejudice would suggest that the duties of a chairman of a municipal board are such that none but an official can discharge them. There are many non-official Indians who are discharging those duties with credit to themselves and great benefit to their towns. I will mention one name which is known to you, Sir,—the name of Rai Ganga Prasad Varma, Bahadur, who in his capacity of senior vice-chairman of the Lucknow Municipality, as you know, has done more for Lucknow than probably has fallen to the lot of many official chairmen to do for the cities of which they have been in charge. He has given ungrudgingly of his time and energy to the improvement of his city. Not even the worst critic of his municipal administration can point to one instance where he has abused the powers he has exercised, while all fair-minded people admiringly admit that they have been exercised to the great benefit of his city and to the glory of non-official municipal administration in the United Provinces.

"Sir, I will now come to the substantial part of the Resolution. What is the Hon'ble Mover of this Resolution asking the Council to do?" Only to recommend to the Governor General in Council that the recommendations of the Royal Commission on Decentralization, which consisted of men distinguished for their administrative capacity and experience, should now be given effect to. That Commission took evidence all over the country. It made its recommendations after weighing fully and fairly all the pros and cons of every question urged before them; and in its collective wisdom it made

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certain recommendations on those questions. It is some of those which my Hon'ble friend asks the Government to carry out. It ought to be remembered, Sir, that the Government have never expressed any opinion against any of the recommendations of the Royal Commission on the heads to which attention has been drawn. Indeed some of us, at least, expect that the Government is going to act up to them, and to issue instructions to Local Governments to stimulate action in the direction of those recommendations. But as some objections have been urged against the Resolution, I feel it my duty to draw attention to the remarks of the Royal Commission on some of the points covered by it. The first question taken up is that the municipal boards should have a free hand in regard to their budgets so long as they maintain the prescribed minimum balance. Now, Sir, this is exactly what the Commission have recommended at page 279 of their Report. They say, 'We consider that municipalities should have a free hand in regard to their budgets, though these should go, through the Collector, to the Commissioner for information, and that the only check required is that each municipality should maintain a minimum standing balance to be prescribed by the Local Government'. I will pass on to the next recommendation, because I must not go beyond my time. The second recommendation is that the municipal chairman should usually be an elected non-official. Mark the word 'usually'. My friend does not urge that the chairman of Municipal Boards should in every case be elected non-official persons. And here, I may say, that I endorse the remarks which the Hon'ble Mr. Cobb has made in this connection, so far as the larger municipalities are concerned,—remarks based on the recommendation contained in paragraph 853 of the Report of the Royal Commission, to the effect that in some of the largest cities it might be desirable to adopt the method in force in the city of Bombay, *i.e.*, to have an elected Chairman, but to vest the executive administration in a full-time nominated officer, with this reservation that I would not insist that in every one of the larger cities it should be compulsory for the Board to adopt the method in force in the city of Bombay; but I would for the present give power to the Government to require the Board to follow that method in any particular case where the Government may deem it necessary that it should be followed. It is not always possible, Sir, even in the larger municipalities, to find gentlemen who are competent and willing to be elected chairmen, who can give their whole time to the details of municipal administration. In such cases it will be eminently desirable, while electing a non-official chairman who would guide the Board aright in their deliberations and the determination of matters of principle and policy, to provide that there should be a full-time salaried officer of the Board who would see the executive administration of the Board carried out in accordance with the decisions of the Board. I need not say more in this connection at present than what has been said so far as the United Provinces are concerned. I have every hope that the United Provinces Government will move forward in the right direction; and that, so far as the Municipal Act is concerned, the provision suggested by the Hon'ble Mr. Cobb will be incorporated in it in such a form that it will both satisfy public sentiment and ensure efficient municipal administration.

"The third recommendation is that district boards should contain an elected majority chosen by the non-official members of the several district boards. With regard to this, I will say this only, that this is a recommendation which has been overdue for a long time. It is time that the district boards should contain an elected majority. It has been said, Sir, that in villages you do not find the best men of the village, that such men often live in towns and that those who live in villages do not possess sufficient common-sense to be able to understand and look after the affairs of the village. Sir, common-sense is not the monopoly of those who live in towns, and the men who live in villages are not wanting in common-sense to the extent which certain Hon'ble Members' remarks would imply. You find men in the villages who deal daily with their affairs connected with agriculture, who deal with the affairs of their own large estates with an amount of common-sense which would surprise some

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of their critics if they came into contact with them more than they do at present. I think, Sir, that the reform suggested in the third recommendation is also desirable and ought to be carried out.

"Then with regard to the fourth point, I would invite the attention of the Council again to the remarks of the Commission, which are to be found at page 238 of their Report. The village *panchayat*, Sir, is an ancient institution; it is unfortunate, it is deplorable, that it has ceased to exist to a large extent; but the soul of it is not yet dead, and the Commission, after weighing fully all the pros and cons of the question recommended as follows:—

Some witnesses hold that the disintegration of the village communities which has taken place under our administration has gone so far that it is not possible to reconstitute them as reliable entities in any scheme of local self-government. There is, however, a large and strong body of opinion in favour of enlisting the help of the people in local administration in the villages, by the establishment of administrative village councils which should bear the time-honoured title of *panchayat*. The common traditions of a village; the fact that its inhabitants are largely connected by ties of blood and caste, and have many interests in common; and the measure of corporate life still existing in the Indian villages, which is shown occasionally by voluntary self-taxation for special purposes, warrant action of this description.

"The Hon'ble Mr. Walsh felt a doubt as to whether it would be desirable now to revive village *panchayats* in their ancient form. The Hon'ble Member expressed his preference for the union committees which are constituted under the Municipal Act in Bengal. Now, Sir, the views of the Hon'ble Member are very much on the lines of what the Commission recommended. At page 289 of their Report the Commission say:—

We do not think it possible, even if it were expedient, to restore the ancient village system, under which the community was responsible for each of its members, and in turn claimed the right to regulate his actions; but we hold that it is most desirable, alike in the interests of decentralization, and in order to associate the people with the local tasks of the administration, that an attempt should be made to constitute and develop village *panchayats* for the administration of local village affairs.

"But the Commission went on to say:—

We are of opinion also that the foundation of any stable edifice which shall associate the people with the administration must be the village, as being an area of much greater antiquity than administrative creations such as *tahsils*, and one in which the people are known to one another and have interests which converge on definite and well-recognized objects, like water-supply and drainage."

The Hon'ble Mr. Walsh:—"Sir, with your permission, I rise to a point of order. I did not say, as the Hon'ble Pandit Madan Mohan Malaviya supposes, that the re-establishment of village *panchayats* is not desirable. I expressed no opinion on the point. I said that as regards the part of India with which I am acquainted, and with regard to which alone I can speak, that in the present altered state of social conditions which have led to the disappearance of the village *panchayats*, I did not think it was possible to resuscitate them."

The Hon'ble Pandit Madan Mohan Malaviya:—"I thank the Hon'ble Member"—

The Hon'ble the Vice-President:—"I must draw the attention of the Hon'ble Member to the fact that he has only one minute more."

The Hon'ble Pandit Madan Mohan Malaviya:—"I am sorry I did not entirely correctly represent my Hon'ble friend, but I think I represented what he said in the spirit. Therefore, Sir, I think that the Resolution which is before the Council runs on entirely sound lines, and all that the Government is asked to do is that it should give its early attention to the

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recommendations of the Royal Commission on the points to which attention has thus been drawn.

" I am confident that the Government will move in the direction recommended by the Hon'ble Mover, and in that confidence I support the Resolution before the Council."

The Hon'ble Srijut Ghanasyam Barua:—" Sir, this Resolution and the next are of importance at this moment, as it was recently declared by you that a fresh resolution on the further advance of the local self-government policy is just now engaging the consideration of the Government of India; and whether the Resolution as it stands is accepted in its entirety or not, I think a discussion of the subject is very opportune at this moment, so that non-official opinion, or to say properly, Indian public opinion as represented in this Council, may be placed before the Government to be taken into consideration before the further policy is declared. My friend the Hon'ble Pandit Malaviya has forestalled me in what remarks I wanted to make with regard to the remarks of Mr. Abbott and Mr. Vijayaraghavachariar. I think the difficulties, as pointed out by the Hon'ble Pandit, have been greatly exaggerated by Mr. Abbott, and I do not think that the relations between Mohammedans and Hindus at the present day are so bad as to necessitate the constant keeping out of both the communities from active co-operation in these local and municipal matters or that they cannot work cordially together; and if there is any such bad relation anywhere, I beg to submit that it is open to Government to remove it from these institutions in such a manner as to bring about a better understanding. These are the fields properly open to the people, where they can best train themselves to greater unanimity and greater concert in all public matters. As to the expert advice which he referred to, my Hon'ble friend Pandit Malaviya has pointed out that it is not right to suppose that non-officials are not capable of becoming equally expert. I would point out in addition that if expert advice is available to the Government official in the position of a chairman, it should equally be available to a non-official chairman. All sorts of help that are available to the official in anything he may need, and any expert advice which the non-official may be in need of, will be made available to the non-official in the same way as they are to the official chairman. Mr. Abbott is not perhaps aware that, in many matters requiring expert advice, municipal bodies are not at all allowed to work without having recognised expert sanction first.

" Sir, with regard to Mr. Achariar's remarks based on the decentralization theory, I perfectly agree that it is time that the local administrations should have their proper share in the initiation and development of local self-government schemes within them; but I must say that we are just now at the stage when we want, and when we must press for, decentralization as well as centralization. We have not as yet come to that stage when we can safely leave it to the local administrations or local officers alone to exercise that amount of discretion and liberality which is necessary and which it is the whole aim and object of local self-government to achieve. What we aspire for is, as was so well put by His Gracious Majesty our beloved King-Emperor, the fusion of the East and the West. The whole aim and object in the past, in the present and for the future was, is and should be, that the East and the West are blended together by an indissoluble tie; and that, while every individual in the Empire is trained up to a proper and real appreciation of the ideals and beauty of the British constitution, and British administration it is as well to have a central guiding authority, which will always have as its aim the achievement of that object. For that purpose I think the Government of India should always be that central authority for directing and guiding the local administrations in properly proceeding in the development of this grand scheme that is before us; and, Sir, hopeless as it may have seemed in the past, I think we are approaching a stage when it is every day becoming more and more possible

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to hope that an all-India citizenship with an Indian Empire uniformly developed in all its parts will be achieved in the future, however distant that future may be. With regard to the remarks of the Hon'ble Mr. Walsh that many municipalities make spontaneous requests to the Local Government for the appointment of their Chairman and that in these cases Government has to help and has always helped them, I have no doubt that these cases are common. I have also no doubt that the official Chairman is always perhaps the most capable that can be had; but we must not lose sight of the fact that it is not for efficiency alone that local self-government is meant or required. In the Resolution of 1882 the late Lord Ripon, of revered memory, laid down the real principle in clear terms, and the opinion expressed in that Resolution should not be lost sight of when a request from a Municipality or Local Board for the appointment of official Chairmen is made even spontaneously. Paragraph 6 of that Resolution shows clearly what was intended. I think the Government of India should again insist upon the following of the policy that is indicated there. That paragraph runs:

It is not uncommonly asserted that the people of this country are themselves entirely indifferent to the principle of self-government; that they take but little interest in public matters and that they prefer to have such affairs managed for them by Government officers.

"In those cases to which the Hon'ble Mr. Walsh has referred I think that is the popular feeling still. I beg to submit that the people should be again moved to a sense of their responsibility. Paragraph 6 goes on—

The Governor General does not attach much value to this theory. It represents no doubt the point of view which commends itself to many active and well-intentioned district officers; and the people of India are, there can be equally no doubt, remarkably tolerant of existing fact. But as education advances there is rapidly growing up all over the country an intelligent class of public-spirited men, whom it is not only bad policy but sheer waste of power to fail to utilize. The task of administration is yearly becoming more onerous as the country progresses in civilisation and material prosperity. Under these circumstances it becomes imperatively necessary to look around for some means of relief; and the Governor General in Council has no hesitation in stating his conviction that the only reasonable plan open to the Government is to induce the people themselves to undertake as far as may be, the management of their own affairs; and to develop or *create*, if need be, a capacity for self-help in respect of all matters that have not, for imperial reasons, to be retained in the hands of the representatives of Government.

"The real question, Sir, is how are the people to be trained; and it is for this training that Government should make every effort. In paragraph 15 of the Resolution it is said:—

The problem before the Government is one of no slight difficulty, being that of discovering in what manner the people of the town and district of British India can be best trained to manage their own local affairs intelligently and successfully.

"Further on it says:—

It may be suspected, therefore that the cause of comparative failure in the efforts hitherto made is to be found rather in the character of those efforts than in the nature of the object pursued. They have been, it seems to the Governor General in Council, wanting to a great degree in earnestness and in real endeavours to adopt the system adapted to the feelings of the people by whom it has to be worked. If this is so, the remedy must lie in ascertaining, by patient and practical experiment, how best to call forth and render effective desire and capacity for self-government, which all intelligent and fairly educated men may safely be assumed to possess.

"I only beg to reiterate that these are the true principles to be followed and that they be repeated by Government with greater force in their promised Resolution and in any legislation that it may be proposed to effect in pursuance thereof. I beg to support the Resolution."

The Hon'ble Rai Sita Nath Ray:—"Sir, while I give my humble support to other parts of this Resolution, I don't know whether to give my support to the fourth part of the Resolution or withhold it. Nothing can be more desirable than that the village people instead of grovelling in the mire and dirt, as is unhappily the case now should live in sanitary surroundings and

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should have good drinking water; and measures should be taken for the improvement of village sanitation. I shall always welcome these measures, but who is to do it? Most of our villages, as at present constituted, consist mostly of men who have nothing particular to do and who are mostly a set of idlers whose only business is to start party factions and thereby satisfy their private grudge. Most of the good men who delighted formerly to live in villages now shun them on account of the growing unhealthiness of the present villages and more particularly, with a view to enjoy the increasing luxuries of modern civilisation and the higher amenities of life, choose to live in towns; and all professional men and all men following trade and commerce do not and cannot afford to live in villages; and the result is, with all the good and true men away, it cannot be desirable to entrust the trust of the *panchayat* system to men who would not, and probably could not, make efficient *panchayats*; and next, it is all very well to ask the people to levy additional taxes for the sanitary and other necessary purposes, but with the present road cess and *ohaukidari* taxes pressing so hard upon the poor villagers, it would be a cruel wrong to the village people to levy more taxes from them. However, if a large part of the cesses is made over to the village *panchayats*, then I have no objection to the formation of *panchayats*; but not for the levying of additional taxes, which the people cannot bear—”

The Hon'ble the Vice-President :—“Order, order! The Hon'ble Member is not in order in referring to the question of taxation. The motion before the Council is that village *panchayats* should be formed to carry out projects.”

The Hon'ble Rai Sita Nath Ray :—“It will lead to that: that is what I wished to explain. However, I may assure my Hon'ble friend that the creation of the *panchayati* system would be the sure harbinger of additional local cesses which would be called permissive cesses.

“For these reasons I am sorry that I cannot accord my support to the fourth part of the Resolution, while cordially supporting the other parts.”

The Hon'ble Malik Umar Hyat Khan :—“I only wish to refer to part (b) of the Resolution. I disagree with what Mr. Abbott says with regard to elected and nominated chairman. Supposing a municipality wanted one of their own men; naturally some would be on his side and some would not; and if this man were elected, the side which was against him would naturally do their best to try and hamper his work. So if instead Government nominated a man as chairman of the municipal council, it would be far better; especially for this purpose; suppose there was a Deputy Commissioner at head-quarters, then the municipality would perhaps be about 20 or 30 miles away from him, and he would only visit it once a year or so. As entrusted; to his care, he is doing lots of other duties which are perhaps more important he will leave matters to the *tahsildar* and the *tahsildar* may delegate his duties to the *darogha*, a man on Rs. 30 or Rs. 40 a month. This *darogha* may sell things worth Rs. 2,000 for Rs. 500 and get some money for himself, leaving the municipality a loser by Rs. 1,500 on the transaction. I do not say this happens always; but there may be that danger. So, nomination, especially if a good man is chosen or nominated by Government, is far better than perhaps a *tahsildar* who is far away from the place.”

The Hon'ble Mr. Porter :—“The Council will recollect that you, Sir, have already been compelled, on behalf of Government, to refuse to publish certain papers dealing with local self-government, on the ground that it will be for the public convenience to publish a resolution on the whole question. The Hon'ble Mover will, therefore, I hope, not think it in any way discourteous if I decline to be drawn into any specific statement of policy, and I gather from his opening speech that he does not wish to elicit a premature statement of this kind, but rather to bring to the notice of the Government of

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India the opinion of the Council. With regard to what fell from the Hon'ble Mr. Achariar, I will not enter into the question of the meaning of the despatch of August, 1911, as it has no direct bearing on the present Resolution. But this much I may say that the Government of India realise most fully that it is quite impossible to lay down any but the most general principles as applying to the different provinces in India. In the course of this debate we have heard of very different systems in Bengal, the United Provinces and Madras and Bombay. Even if it were possible of attainment, uniformity would be undesirable as tending to lifelessness and monotony and as impeding experimental action. In each province the administrative system has grown up on lines of its own and with reference largely to local needs, and a measure or a procedure which might suit one province might be wholly inapplicable, or at least unnecessary in another. It follows that the decisions, in most matters connected with local self-government, which require the intervention of a central authority at all, should be left very much to the discretion of the Local Government concerned, and I really think that questions of local self-government are most usefully discussed in provincial councils rather than in the Imperial Council. I may remark that the Hon'ble Mover scarcely travelled beyond Bengal in his opening speech. It is probable that in the next few years excellent opportunities for such discussion will arise in connection with probable amendments of the Municipal and other Acts pertaining to local self-government.

"With these few prefatory remarks, I will deal with the resolution by sections.

"As regards (a), *viz.*, that, subject to the maintenance of prescribed minimum balances, municipalities should have a free hand in respect of their budgets, Local Governments generally have been prepared to accept the recommendation or to make considerable relaxations in existing practice.

"As regards (b), *viz.*, that municipal councils should usually elect their own chairman, the Hon'ble Member referred to statistics which have been laid upon the table. The figures show (he excepted Bengal) that out of 685 municipalities 477 have the privilege of electing their chairmen; thirteen more who possess the same privilege have asked Government to nominate. It is moreover stated in paragraph 851 of the Commission's Report that in a large portion of India, *e.g.*, Madras, Bengal, Bombay and the Central Provinces, there are already a considerable proportion of elected non-official chairmen, as recommended by the Commission. In the United Provinces there has been a real effort of late to substitute non-official for official chairmen. The Hon'ble Mr. Cobb has told us the difficulties which have had to be contended against, but real progress is being made.

"As regards (c) and (d), I can only say that the matter is still under consideration. The Hon'ble Mover will be interested to learn that in most provinces the Commission's recommendation that district boards should contain a majority of elected members is already realised or about to be introduced.

"The establishment of village *panchayats* is, it will be recognised, a matter calling for great thought and care, and I can only assure the Council that it will receive these.

"In conclusion I may say that the policy of the Government of India is to progress slowly and surely on the lines laid down; and I do not think that anyone who has experience in such matters will wish us to move hurriedly in matters of administration which touch, at many points, the daily life of the people. In building up an administrative system, it is easier to make mistakes than to correct them; and it is only by steady progress, with due regard to local circumstances and conditions, that really healthy development can be achieved. The ends of Government and the educated classes are in the main the same; and, although in the circumstances I cannot accept the Resolution, which would impose rigid uniformity throughout the

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widely differing provinces of India, at the same time I can assure the Hon'ble Mover that the trend of this debate will receive careful consideration before the Resolution is published."

The Hon'ble Mr. Surendra Nath Banerjee:—"Sir, I desire to thank the Hon'ble Member who has just spoken for the assurance he has given me that the points which have been raised in this discussion and the views which have been put forward will receive the careful consideration of Government. The object of my resolution was to place the Government in touch with the trend of educated opinion as regards some of the most vital issues affecting the question of local self-government. I do not want the Government to pledge itself to any policy; I fully understand the situation of the Central Government in regard to Provincial Governments in a matter of this kind. The Central Government can only lay down general principles which have to be modified by the Provincial Governments in the light of local conditions and circumstances. That was, indeed, the way in which Lord Ripon proceeded and that must continue to be the policy of the Government of India until we have a complete system of decentralization. Sir, I thank the Government for the assurance that the debate to-day and the views which have been expressed here will receive careful consideration, and I will not press the resolution in view of this assurance. But you will permit me, Sir, to refer to one or two matters which I think it necessary for me to take note of.

"I desire (and I think I may say so on behalf of the non-official Indian Members here) to thank the official members not connected with the Government of India who have spoken upon this subject. Both of them, the Hon'ble Mr. Cobb and the Hon'ble Mr. Walsh, have shown their deep sympathy not only with the resolution, but with the whole system of local self-government, and, how very different was the attitude of Mr. Abbott! We have about 200 municipalities in which there are non-official chairmen; and we have these 200 ships which, according to Mr. Abbott, are sailing without rudder or compass; and yet no great catastrophe has happened, things are going on just the same now as they were before. I think his apprehensions have been grossly exaggerated; they certainly are not shared by responsible administrators.

"There was one remark which fell from the Hon'ble Mr. Cobb, which I think needs some explanation. He observed, in the course of his speech, that party spirit interfered with the growth and development of local self-government. This is a point which is very often urged on the official side by official members here and elsewhere. Party spirit is an inevitable element in all forms of government by discussion. We have it in Europe; we have it in civilized countries; we have it here."

The Hon'ble Mr. Cobb:—"May I explain, Sir, that I distinctly alluded not to general party spirit, but to the particular religious animosities which at present unfortunately exist."

The Hon'ble Mr. Surendra Nath Banerjee:—"If it is in reference to particular religious animosities I will say this, that these animosities are dying out; that the feeling of cordiality and friendliness between Hindus and Mohammedans is growing; and we find, in connection with the recent *Bakri-Id* festivals that there were less numerous cases of breaches of the peace than there had been before. Therefore, altogether, the outlook is hopeful and satisfactory. Party spirit with regard to municipal affairs is indeed dying out, is certainly diminishing, and I hope and trust that, with the spread of education and the growth of public spirit, our people will learn to subordinate to national ends the ends of party.

"Sir, one word with reference to my friend the Hon'ble Mr. Vijjaraghavachariar. I have the highest respect for the opinions of my friend. I am often on the same platform with him, though sometimes I have to stand upon a different platform. I welcome his opposition, and for two reasons.

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In the first place it shows that we non-official Indian members in this Council Chamber do not vote by parties, that in giving a decision on any point, we act according to the light of our individual consciences and the light of our individual judgments. In the second place, his opposition shows the strength of my case. When we have provincial autonomy (and no one is a stronger advocate of provincial autonomy than myself), we shall certainly not come to the Government of India for a thing of this kind; but so long as we have not provincial autonomy, we are bound to come to the fountain head of power and influence it in order that it may shape its policy for the furtherance of provincial autonomy, and this Resolution is indeed but part of a scheme of provincial autonomy. What do we want? We want the Imperial Government to delegate some of its powers to the Provincial Governments, and we want the Provincial Governments to delegate some of their powers to local bodies, the representatives of the people. Is not that a forward step in the direction of provincial autonomy? And further, Sir, if my friend were to analyse my Resolution he would find that, with the exception of one matter, in every case legislation would be necessary, and if legislation were necessary, a Bill would have to be drafted and the Bill would have to be sent to the Government of India for approval. Is it not far better that we should come to the Government of India direct and lay our views before the Government instead of going about it in this roundabout fashion? Therefore, Sir, I do not think that the position which my friend has taken up is a tenable one; and, on sober reflection, I am sure he will agree with us.

“I do not wish to detain the Council at further length—no further reply is required. I beg leave to withdraw the Resolution.”

The Resolution was, by permission, withdrawn.

RESOLUTION *RE* ELECTION OF PRESIDENTS OF RURAL BOARDS, APPOINTMENT OF ADVISORY COUNCILS FOR COLLECTORS AND CREATION OF A LOCAL GOVERNMENT BOARD FOR EACH PROVINCE.

The Hon'ble Mr. Surendra Nath Banerjee:—“Sir, I beg to move the resolution which stands against my name—

That this Council recommends to the Governor General in Council the adoption of the following recommendation made by Mr. Romesh Chunder Dutt, a member of the Decentralization Commission:—

- (a) that the Presidents of District and Sub-District Boards should be elected;
- (b) that Advisory Councils be formed to help the Magistrate-Collector in the discharge of his executive duties;
- (c) that a Local Government Board be formed in each province for exercising control over rural boards and municipalities.

“It is associated with the honoured memory of the late Mr. Romesh Chunder Dutt of the Indian Civil Service. A distinguished scholar and a man of letters, Mr. Romesh Chunder Dutt was also a brilliant administrator. He was the first Indian to rise to the position of a Divisional Commissioner; and he would have risen still higher if the attractions of literary pursuits and his ambition to improve and ennoble the literature of his own country had not led to his early retirement. Sir, he was the only Indian member on the Decentralization Commission, a fact which testifies to the appreciation of his worth as a practical administrator in the highest circles of Government.

“Sir, the first part of my resolution relates to the election of Chairmen by the District and Sub-District Boards. Here I again take my stand upon the Resolution of the 18th of May, to which I referred yesterday, and which

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lays down the principle that, whatever official control has to be exercised over local bodies should be exercised from without rather than from within. I said yesterday that this principle was endorsed by Lord Morley, who regarded it as a vital principle of Local Self-Government, and he invited the Government of India to affirm it and actively shape their policy in accordance with it. But, Sir, objections have been taken to the view I have urged by the majority of the members of the Decentralization Commission. Their objections are formulated at pages 265 and 266 of their Report. They say that the effect of such a change would be (I think I am quoting their words) to divorce the Collector from all healthy contact with instructed non-official opinion. To that objection my reply is this, that the District Boards, as constituted at present, do not and cannot reflect non-official opinion, instructed or otherwise. But waiving that point, admitting for argument's sake, the full force of this objection, I submit that it is met by the second branch of my resolution which recommends that Advisory Committees should be appointed. If Advisory Committees be not appointed, if the second branch of my resolution be rejected, it will still be open to the Collector, as it was open to him before the creation of District Boards in 1886, as it is still open to him in some parts of the Central Provinces, to consult educated local opinion, though in an informal and therefore in a less effective manner. Sir, you will not (I reply to the objector) you will not give us Advisory Committees on the ground that they will weaken the authority of the Collector; you will not allow us to elect our own Chairman, on the ground that it will deprive the Collector of the opportunity of coming in contact with instructed opinion of the locality. Therefore, Sir, it comes to this, that we and our institutions exist for the Collector and not the Collector for us. I venture to submit that this is an exploded doctrine as applicable to present-day Indian administration. Furthermore, it does not lie in the mouth of those who refuse us the boon of Advisory Committees to make that the ground of denying us this right involved in the great Resolution of the 18th May, 1882.

"Let us look at the matter from another point of view. In Bengal, and I presume it is the case in other parts of India, the Vice-Chairmen of district boards are usually non-official Indian gentlemen, and I say this, that the brunt of the work in many cases is borne by the Vice-Chairman. Therefore, Sir, it comes to this, that you give the work to be done by one, but the responsibility and the power belong to somebody else. Is that conducive to efficiency?"

"Sir, I rely upon the authority of the Hon'ble the Home Member in support of this branch of my Resolution. In opposing Mr. Gokhale's Resolution in February, 1912, in connection with the appointment of Advisory Committees, he indicated his views as to the future of local self-Government. He said,—I think I am quoting his exact words, but he will correct me if I am not—'as time goes on, various functions which are now vested in the Collector should be withdrawn from him and they should be made over to District Boards and Municipalities.' Well, Sir, I say this that here we have a function which with the utmost advantage to the public interests may be withdrawn from the Collector and made over to the district boards to be exercised by them through their elected Chairman.

"I now come, Sir, to the second branch of my Resolution, the appointment of Advisory Committees. A similar Resolution, but in a somewhat more amplified form, was introduced in this Council in February, 1912, by the Hon'ble Mr. Gokhale. That Resolution was lost after considerable discussion; the Indian voting, however, being substantially unanimous. I do not indeed go so far, for the present at any rate, as regards details as the Hon'ble Mr. Gokhale did. I shall be satisfied if the Council will accept the view that it is necessary to create Advisory Committees to help the Collector in the discharge of his executive functions, the details being elaborated by the Government subject to the approval of this Council. Sir, when I invite this Council to accept this principle, I claim to have on my side practically the whole weight of the authority of the Decentralization Commission, for the majority agreed in the recommendation that the practice followed by some Collectors of consulting their District

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Boards on questions beyond their legitimate sphere should be extended. My Hon'ble friend opposite, Sir William Meyer, went a step further. He said that 'the practice should be general'—I think I quote his words. Therefore, the necessity of the Collector taking advice in the discharge of his executive duties is admitted by the majority of the Decentralization Commission as well as by Mr. Dutt. The only point of difference is that, whereas the majority regarded District Boards as a suitable organization for the purpose, Mr. Dutt recommended that separate Advisory Committees independent of the District Boards should be created. I venture to submit that the whole weight of argument is in favour of Mr. Dutt's view. The District Boards are created for a particular purpose; you want them for a general purpose; their unsuitability is obvious. Then, Sir, as I pointed out yesterday, the District Boards are largely officialised bodies consisting of a majority of nominated members. Are they a suitable organization for the expression of non-official opinion, instructed or otherwise? No, Sir; for that you must look elsewhere. With the advance of public opinion and the growing complexities of administrative problems in this country, the necessity of executive officers of Government being placed in close touch with the people of the country is being felt in an increasing measure. In Bengal a Committee has been appointed and is at present at work to suggest means for the promotion of this object. From the published reports of the evidence taken by the Committee it seems that there is a general consensus of opinion among the educated classes in favour of the view that the only solution of the problem lies in the appointment of Advisory Committees independent of the District Boards. Sir, we have heard a great deal about Collectors holding informal conferences with the *raiyats*. What need is there for intermediaries, exclaims the objector, when the Collector can go straight to the *raiyat* and talk to him in the language of the *raiyat*? Sir, there are two difficulties in the way. In the first place the Collector is an overworked official. He is tied to his desk from morning till evening, buried amid piles of reports which he has to read, to digest and to whose volume he has sometimes himself to add. If he can tear himself away from the state of bondage, he is confronted with another difficulty—the difficulty of language. Is the Collector always able to speak to the *raiyat* in the language of the *raiyat*? Sir, I am myself unable to make a pronouncement on that subject, but I quote the authority of the Decentralization Commission. They took a lot of evidence on the subject and this is what they say: 'We find European officers, more specially in Madras, Bombay and the two Bengals (that was before the partition, at the time when we had two Bengals), we find that European officers are not sufficiently acquainted with the vernaculars'; and they add: 'We consider that the officers of Government, and specially the European officers, are not in sufficient contact with the people.' European officers include Collectors. Therefore, this statement analysed means that Collectors are not in sufficient contact with the people. Therefore, we are driven to this conclusion that, despite the District Boards which the Collectors might have used as advisory bodies, they were not in sufficient contact with the people. Therefore, Sir, the conclusion is irresistible that the District Boards have failed as Advisory Committees on the showing of the Decentralization Commission itself.

"Let us take another objection. If these Committees are appointed, it is said that they will hamper the Collector and weaken his executive authority. Evidently the Decentralization Commission did not take that view, for if they had, they would not recommend even the District Boards as Advisory Committees. How can the Collector feel hampered in the exercise of his executive duties by advice which he is under no obligation to accept? Or how can an Advisory Committee degenerate into a hot-bed of intrigue, as was said by the Hon'ble the Home Member in the debate of 1912, when the utmost limit of their authority will not extend beyond tendering advice which the Collectors need not accept. Sir, in the course of that debate, on the occasion of the Hon'ble Mr. Gokhale's motion, my Hon'ble friend Pandit Madan Mohan Malaviya made a remark that as the Viceroy and Governors had their

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Councils to assist and advise them, it was only right and proper that the Magistrate-Collector should have his Advisory Committee. To that the Hon'ble the Home Member made the following reply. He said 'there is no analogy between the work done in this Council and the Provincial Councils and the work done in the Collector's office. The Collector is a mere executive officer; he has to carry out policies, not to determine them. I accept the statement; which, however, overlooks one or two very important considerations. The Collector of the district is indeed an executive officer, but he is something more; he is, in the words of a great Anglo-Indian administrator 'the eye and the ear of the Government. Through him the Government sees; through him the Government hears.' All large administrative and legislative proposals before they have materialised into definite measures and policies have to be reported upon by him. They come before him in their formative, their fluid stage. It is then open to him to give them form, shape and direction. Therefore, Sir, I say this, that at an early and important stage, he is in one sense the creator of all measures and of all policies. I think the position is irresistible, and, therefore, is it not necessary, is it not desirable, that he should, even at this early stage, have the benefit of the advice, the corporate and responsible advice, of a body of men like the representatives of local opinion?

"How many blunders would be avoided; how many difficulties overcome; how facile would be the course of legislative and administrative measures, if at their inception, or very near the stage of their inception, the executive authorities were placed in touch with the cultured opinion and the better mind of the land? Take a concrete case. There was no question which in the annals of Bengal in recent times more profoundly stirred the hearts of our people than the Partition of Bengal. It was said at the time that the agitation which it gave rise to was a machine-made affair, that the Bar was pulling the strings from behind and was moving forward the wheels of agitation. My Hon'ble friend there (Mr. Kenrick) was not the leader of the Bar at that time and was innocent of all complicity in this wicked and nefarious conspiracy. However that may be, if we had Advisory Committees at that time, this question of the Partition would infallibly have been placed before them and then the Government would have been in a position to ascertain the genuine sense of the community, and what undoubtedly was a deplorable blunder would have been averted. Sir, in Bengal such questions as the partition of districts, the creation of sub-divisions, the opening of *thanas* and *chaukis*, the establishment of honorary benches, are constantly cropping up, and Advisory Committees would afford invaluable aid to the administration.

"Lastly, Sir, I take my stand, so far as this branch of the subject is concerned, upon what is admitted by the Government of India and by Lord Morley himself as the fundamental underlying principle of the reform scheme. I will read an extract from his despatch of 27th November, 1908, which has so often been quoted:—

Your Excellency claims for your scheme as a whole 'that it will really and effectively, associate the people of India in the work not 'only of occasional legislation but of actual every-day administration.' The claim is abundantly justified, yet the scheme hardly pretends to be a complete representation of the entire body of changes and improvements in the existing system that are evidently present to the minds of some of those whom your Government has consulted and that to the best of my judgment are now demanded by the situation described in the opening words of the despatch.

"Well, Sir, the underlying principle of the reform scheme therefore is that the people should be brought into association with the Government in the every-day work of administration. In order that this principle may be given effect to and the noble words of Lord Morley vindicated, I commend with all confidence the adoption of this part of my Resolution by the Council.

"I now come, Sir, to the last branch of my Resolution, *i.e.*, the creation of a Local Government board for each province. At present, under existing conditions, control is exercised over local bodies by the Magistrate, the Commissioner of the Division, and in some cases, by the Government. What I propose is that these authorities should be relieved of this power which

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should be vested in a Local Government board. The advantages of this proposal are obvious. The Collector has multifarious duties to attend to. He is not an expert, and in these days of specialisation every department of Government needs expert knowledge and experience which the Collector does not and cannot be expected to possess. Thus, Sir, under existing conditions efficiency is lost amid the diffusion of duties, the distraction of attention and the absence of expert knowledge. A Local Government board would remove these drawbacks and further ensure uniformity and co-ordination in the working of our system of Local Self-Government. Sir, Lord Morley was inclined to accept this proposal, but he awaited the report of the Decentralization Commission. This is what he said,—it is a small extract and I will read it out:—

The encouragement of Local Self-Government being an object of high importance in the better organization of our Indian system, it remains to be considered how far in each province it would be desirable to create a department to deal exclusively with these local bodies, guiding and instructing them, correcting their abuses, in a form analogous to the operation of the Local Government boards in this country. That, however, is a detail, though a weighty one, of the question on which as a whole I confidently expect that Your Excellency will find some light in the forthcoming report of the Decentralization Commission.

“The Decentralization Commission, with the exception of Mr. Dutt, voted against the proposal, and the gist of their argument is this: that as their recommendations, by reason of the delegation of power, would restrict the area of Government control over the local bodies, it was no longer necessary to create Local Government boards for each province. Well, Sir, the Decentralization Commission—I speak of that body with the utmost possible respect—could have no forecast of the recent developments of local self-government. The Government of India have been making, and will I hope continue to make, large grants for sanitary purposes. Sanitary schemes and provincial projects arising out of them will have to be considered; and I contend that they will be best considered by a body exclusively devoted to that work and furnished with expert knowledge. Such a body would be a source of inspiration and guidance, the value of which it would be difficult to exaggerate.

“Sir, I have now laid my case before this Council, and I await its judgment. I cannot indeed disguise from myself the fact that, in regard to two at least of the three points covered by my Resolution, the majority of the Decentralization Commission are opposed to me. But, Sir, the Decentralization Commission submitted their report in 1909: this is 1914. India to-day is not what India was even in 1909: great changes have taken place even in the short period of a quinquennium. In the words of the late lamented Lord Minto:

India has felt the full impact of that wave of progress which is sweeping through Asia bearing on its crest the germs of vast and stupendous changes.

“But the framework of our system of local self-government was fixed 30 years back and it has not been changed since then. In the meantime the administrative machinery in its higher ranges has been re-adjusted to the novel conditions. In 1893 the Councils were enlarged and reformed in pursuance of the Parliamentary Statute of 1892. In 1910 the Councils were again enlarged and reformed in pursuance of the Parliamentary Statute of 1909. But our local bodies were constituted between 1884 and 1886, and they remain what they were. Lord Morley regards them as an integral part of his reform scheme. Obviously the old should be adapted to the new in order that it may respond to the impulses of progress which vibrate through the whole administrative machinery. Sir, therefore, with statesmanlike insight, Lord Morley has called for an advance in the direction of local self-government. The public voice endorses that view, and I submit, with all respect but with the utmost emphasis, that it is the supreme duty of Government to bridge the gulf that separates the demands of an advancing public opinion from the prevailing administrative and legislative conditions, to harmonise them, and, by allaying contention and controversy, to spread broadcast the blessings of peace and contentment.

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"With these words I beg to move the Resolution which stands in my name."

The Hon'ble Mr. Arthur said:—"Sir, as one who has been a District Officer throughout his service I may be permitted to say something from the District Officer's point of view on recommendation (b) of this Resolution, namely that Advisory Councils be formed to help the Magistrate-Collector in the discharge of his executive duties.

"Those duties are manifold. The Collector is responsible for the peace of a district of perhaps 5,000 square miles and for the well-being of a population of a million or more living in a few towns and 1,400 or 1,500 villages; he is responsible for the collection of revenue and the control of a large revenue staff; he supervises the work of a number of Subordinate Magistrates; he is the head of the Police and of the Forest Department; he is President of the District Board; he is District Registrar; he is Political Agent for any Native States attached to the District; he supervises the work of Municipalities; in consultation with the Executive Engineer he makes out a scheme of Public Works; he is responsible for famine administration and for measures to deal with cholera and plague epidemics.

"Let us now see whether an advisory council could help the Collector in performing these duties. Supporters of the Resolution may say, 'I never suggested that the Council should interfere in this or that duty.' The wording of the Resolution however is that the Council should assist the Magistrate-Collector in the performance of his *executive* duties, and if a Council were appointed for this purpose, I venture to say that there is no branch of his duties in which they would not sooner or later interfere.

"I hardly think any one will be bold enough to suggest that a Council could assist the Collector in his work as Political Agent. He stands towards the Chief of a State in the position of the accredited representative of Government. How would the Chief view interference in his State's affairs by an irresponsible non-official Council?

"The Collector's work as District Registrar consists in the control of a staff of Sub-Registrars and their clerks and annually inspecting their work in the course of his tour. It requires much technical knowledge and it is obvious that a Council could not assist in its performance.

"The Collector is the head of the Forest Department with the Divisional Forest Officer as his Assistant. It lies with him to hold the balance evenly between the opposite extremes of such severity as will allow the Department to become an engine of oppression and a misplaced leniency which may result in untold damage to forests. In such matters as Forest Conservancy would not an Advisory Council be strongly tempted to adopt the popular side and champion petitions for unwise or impossible forest concessions?

"As regards public works the Collector is jointly responsible with the Executive Engineer for bringing the needs of the district to the notice of Government and seeing that he spends almost half the year on a tour which takes in the whole district, I think no one could be better qualified than he to judge of the merits of conflicting claims on the public purse in this direction. Taking human nature as it is, would not individual members of his Council inevitably favour works to benefit their own neighbourhood? Does not one of the foundations of a Collector's successful administration consist in his known independence of local interests?

"As President of the District Board the Collector has in the members of that Board and of the subsidiary Taluka Local Boards, Advisory Councils, more or less useful according as their members take interest or otherwise in the works. No council independent of these Boards could help the Collector in this branch of his duties. Here as elsewhere multiplicity of advice means confusion.

"A Collector has to manage a large Revenue and Magisterial Establishment. He has to make appointments and promotions, grant leave, etc. Sir, to do

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justice in promotions in a large and scattered staff most of whose members the Collector sees only once a year is of itself a difficult matter. I once had to decide on the merits of a clerk described in the last note by the Head of his office as 'Hardworking, but idle'! I think it will be admitted generally that while an establishment can be controlled by one man it cannot be controlled by a Council.

"The Collector as District Magistrate is the head of the police force of the district with the District Superintendent as his Assistant. It is scarcely necessary for me to point out the impracticability of a Council helping him in his duties.

"So too as regards the rest of his work as District Magistrate. He may at any moment be required to take strong action to prevent or to quell a riot, on his quickness and accuracy of judgment and strength of character many lives may depend, and failure to act at the right time may have serious and far-reaching results. And, be it remembered, this action may be called for at any place in an area of perhaps 100 miles by 50. How could a council help him in such an emergency? He would require not one but several councils, each for a given area, and then before acting on advice proffered he would have to assure himself both of the impartiality of his advisers and of the soundness of the advice they tendered. Their advice might be directly opposed to that of the local Magistrate, the Deputy Collector or Mamlatdar. The District Magistrate would become enmeshed in a hopeless tangle of contrary opinions and his action paralysed at a moment when decision was essential.

"A District Magistrate however has not only to deal with emergencies. There is a great deal of routine work to be done by him if the magisterial work of the district is to be efficient. The returns of cases tried by Subordinate Magistrates come in every month. A careful inspection of these will reveal much. I don't mean that it will enable the District Magistrate to remark that column 12 has been wrongly filled in! By calling for and reading the records of a certain number of cases he will get an insight into the work of Subordinate Magistrates which must be useful and which may, as I have found by experience, be invaluable. Interference by a council in such work would be undesirable—and indeed illegal.

"In famine time, as may be supposed, the Collector is taxed to the uttermost. He must watch the conditions closely from the day that crop failure is a certainty. He must be prepared to start famine works where necessary and to organize a system of village inspection without which the aged and infirm would die of starvation. He must arrange for village dole distributions, kitchens, fodder operations and takavi advances for land improvement and for the purchase of seed and cattle; he must decide promptly what suspensions and remissions of revenue are necessary and throughout he must be constantly on the watch to see that arrangements work smoothly and to prevent oppression and speculation. Successful famine administration depends upon intimate knowledge of the conditions in the stricken area. It is further work that does not admit of delay. A Council would seriously impede the Collector at such a time.

"In plague and cholera epidemics the Collector does what he can with the aid of the Civil Surgeon and the sanitary department. He may have to take unpopular measures with a view to saving life. That is all in the day's work for him, and I do not see that a Council would help.

"The Collector has confidential work on a variety of subjects. I don't think it has ever been suggested that a Council should have anything to do with this, but it must be remembered that confidential information may materially affect his action and how could a Council judge of the desirability of the action without knowing the grounds on which it is proposed?

"Sir, have I not said enough to show that the work of a Collector is in its very essence personal? He may deal with every correspondence on his table and barely touch the fringe of real administration which depends on his personal contact with the people.

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[*Mr. Arthur.*]

"I would like now to say a few words about the district tour which plays so important a part in the work of the Bombay Revenue Officer. Except in the rains the Collector and his Assistants are generally on tour and are in close touch with every section of the population. They are constantly visiting villages and they hear petitions every evening in camp. It is the tour which is the basis of successful district administration. From the day he takes over a district a good Collector is constantly informing himself as to what is going on throughout his charge. The whole district forms his Advisory Council. To limit his advisers to a definite body of men would be to hamper and fetter him at every turn. Sir, allegations have been made in this Council and outside it that the Collector and his Assistants of to-day are out of touch with the people, cannot speak their language and need some medium of communication. This is one argument adduced in favour of Advisory Councils. The Civil Service is silent, it makes itself heard neither in the press nor on the platform and the libel is frequently accepted and passed on without investigation. I have been a District Officer for the past 25 years and have come in contact with a large proportion of the District Officers in the Bombay Presidency, and I can say from my own knowledge that the allegation is the direct contrary of the truth. I have had a large number of Assistants serving under me and I cannot call to mind one of over three years' standing who has not known the language sufficiently to converse freely with the people, visit their villages without an interpreter and make himself acquainted with their wants, while many become really proficient. Why, Sir, for seven months in the year the Assistant Collector hardly meets an Englishman, while he is talking the vernacular all day. Sir, I do not wish to be misunderstood. There are four vernaculars in use in the Bombay Presidency—Marathi, Guzerathi, Sindhi and Kanarese. It is not in reason to expect any Civilian to master them all, and I do not say that an Assistant Collector suddenly transferred from Sind to Kanara would necessarily know the language. I do say that he would get a very good working knowledge of it in his first two years there.

"The allegation to which I have referred is a peculiarly infelicitous one to receive currency in such a period as the past fifteen years. I suppose no more disastrous time has been known in the Deccan during the past century than the decade from 1897 to 1907. During that period in Satara, the district of which I held charge for half that time, one-fifth of the population died of plague while there were three distinct famines and several bad seasons. In this disastrous time all that I saw was increased activity on the part of touring officers of all departments and a genuine appreciation by the people of the sympathy and help they received.

"Sir, I have pointed out objections to the appointment of a Council inherent in the nature of a Collector's work. What about the difficulties in the formation and method of work of any Council it is possible to devise? Should the Council consist of residents of the headquarters of the district or of different localities? If the former, what knowledge would they have of matters in distant towns and villages? If the latter, how could local knowledge be obtained through them without appointing a Council hopelessly unwieldy in point of numbers? What interests would be represented? Is it proposed to represent all classes?—If so, unwieldy again. Should they sit together to assist the Collector on all subjects or should the different members deal only with subjects in which they or their class are interested? Should they tour with the Collector? If so, how could they attend to their own business or how are they to be remunerated for leaving it? If not, what knowledge could they possess of matters at a distance from their homes and how could they help the Collector in deciding these when he had studied them on the spot and had already the best local opinions, official and non-official? Again, if they are not to tour with the Collector, when and where are they to meet him? It has been suggested that they should meet him once a month at headquarters. How many of the matters now decided on the spot as they arise are to be hung up for these monthly meetings? What would be the position of the Collector who had to say to applicants 'Oh, I can't possibly decide this question. I must

[*Mr. Arthur.*]

[19TH MARCH, 1914.]

go and consult my Council?' Then too consider the time it would take the Collector to leave his camp and travel, it might be two days' march and back again, and the serious dislocation to his work it would involve. And when he had done this how many of the thousand and one things that have come before him in the month could he lay before them in one or two days, explaining with reference to each the history of the question, the *pros* and *cons*, local opinions, etc., and when he had done so what would their opinion be worth? If they had not local knowledge they would be bound to concur in the opinion formed by the Collector on the spot. The Council must then either be reduced to a set of puppets and consultation with them become a farce or they must be required to visit the locality in which the question has arisen. Well, Sir, taking the size of an average district the amount of travelling entailed would be enormous. Men with any business of their own could not do it, and places on the Council would, I fear, be sought by undesirable persons for their own ends. Every District Officer knows the difficulty now experienced in getting the best men to give their time and energies to the work of Municipalities and Local Boards even at their own doors. Assuming that you could get good men able to give the time and physically fit for the amount of travelling to be done—a large assumption—what position would a Collector rushing hither and thither, as questions arose for decision, accompanied by a Council of men of all castes and classes, occupy in the eyes of the people? What language is to be the medium of communication between the Collector and his Council? Is the latter to be confined to English knowing men? If so, it is a very material limitation. It excludes straight off, for instance, every member of the cultivating class. Again if the Collector is to deal with the people through an English knowing Council, what additional inducement is there to him to learn the vernacular? On the other hand if places on the Council are not to be confined to those who know English, the Collector had much better deal with the people direct.

"Then, too, I would ask what would be the position of the officers on the spot, the Deputy Collector and the Mamlatdar or Tehsildar? Is the opinion of the Council without local knowledge to weigh against that of these highly educated, highly trained, experienced, responsible officers? How many visits of the Council would it take to break their prestige in the eyes of the people?"

"Then, Sir, it must be remembered that the Collector has a very great deal of work to get through in a very limited time. In Bombay there is no Collector who has not already as much as he can well do in the day. The only question is what he has time to see to personally and what he must entrust to others. Is it conceivable that he could dispose of his work at all if he had constantly to be travelling long distances to consult a Council? His task, difficult enough now, would be impossible.

"Sir, it is the Collector who is the embodiment of Government in the eyes of the people. Anything that weakens his prestige in their eyes weakens the prestige of Government. They understand rule by one man; they certainly would not understand rule by a committee. In administration by committee you will introduce a system wholly unsuited to the country. I deny that the Collector who spends his life among the people takes less interest in and knows less about them than the head-quarter pleader or trader. I maintain that he takes more interest and knows more. Those who vote for this Resolution will vote not for what will bring the Collector into closer touch with the people—he is in close touch already—but for the erection of a barrier between them. I object to this Resolution from the point of view of the people, whom it will place under a rule incomprehensible to them. I object from the point of view of existing local bodies, which will have private persons unconnected with them prying into their affairs. I object from the point of view of the Collector's official subordinates, European and Indian, whose work will be perpetually interfered with by irresponsible critics. I object from the point of view of the Collector and District Magistrate, who will find himself hampered at every step, his labours greatly increased and his administration paralyzed."

[19TH MARCH, 1914.] [*Malik Umar Hyat Khan.*]

The Hon'ble Malik Umar Hyat Khan :—“ Sir, the Resolution moved by my Hon'ble friend may suit the Bengal Province but it does not suit the Punjab. I have had a long experience of District Board in the capacity of its member and Vice-Chairman. I realised then that many members were not alive to their duties and responsibilities. There are men who, are asleep and do not know what is going on ; there is another class of men who, though awake, possess little knowledge of what is happening. The rest who know are so weak that they dare not express their opinions in opposition to the official view. They are also prevailed upon by any influential member amongst them. If the latter cares to speak before the meeting and asks for their vote, it is readily promised and given. A movement is being made towards the betterment by appointing higher classes, better qualified, and thus more alive to their responsibilities. If an election was to take the place of the nomination it would set back the hands of the clock and all the well-to-do men who can speak on subjects authoritatively would be debarred from entering such bodies. They would never like to stand as candidates fearing humiliation in case of a failure in election. Their self-respect and social status would never permit them to go abegging for votes to the houses of people who would equally feel ashamed of their visit, if the former went to them. Thus inferior class, having no standard of any such thing in their life at all and unable to discriminate between the words self-respect and humiliation, would, easily, jump in. In my opinion such a resolution should have been moved in the Provincial Council in an advanced province and not in the Imperial one for the sake of the whole of India. As to the (a) part of the resolution there will be no harm if the Chairman be non-official, but I will prefer nomination to election. As to (b) it will be entirely unworkable. The Collectors already ask the advice of the leading men ; but directly the Advisory Councils were constituted, the members would be known to the public, and the people concerned would leave no stone unturned to prejudice them. As to (c) the Commissioner of the Division already exercises control over his division ; and if one board was constituted in a province, it would be centralizing more than decentralizing ; and thus contrary to the very meaning of the name of decentralization commission whose proposals are now put forward for discussion.

“ Now, Sir, I will just make a few remarks about the desirability of having a separate chairman for the District Board. I think one of my official colleagues has made a sufficiently good case against Advisory Councils by showing the multifarious duties of a Collector. From this it is evident that such a Collector should be jack of all trades, but master of none ; and it is most desirable that any work like the chairmanship of a District Board, should be taken away from him so that he may be able to devote his time to more useful purposes. This shall serve two ends—firstly, that the members shall learn to take the responsibilities upon their own shoulders, as at present all that Deputy Commissioners say has to be done whether right or wrong ; and, secondly, that the non-official member with local knowledge will be able to carry on the work far more efficiently than an already over-worked collector. When I was questioned by the Decentralization Commission, especially by Mr. Romesh Chunder Dutt, regarding the chairmanship of District Board, I explained to him my personal experiences. The District Board, I said, was first managed by Deputy Commissioner. When I got its charge as a Vice-President, I increased the income by a few thousand rupees and during every subsequent year the income continued increasing, till I was sent to active service, first to Africa and then to Tibet, when I had to resign.

“ I knew I could further improve many things by taking a personal interest ; such as the Deputy Commissioner could not possibly do, having so many different things to do.

“ I am totally against the Resolution as it stands, but if it had recommended that the District Boards should have a nominated chairman, I would have been quite on the side of the Resolution.”

[*Mr. Walsh.*]

[19TH MARCH, 1914.]

The Hon'ble Mr. Walsh:—"Sir, I should also like to say a few words, based on my experience both as a Magistrate-Collector and as a Commissioner, with regard to clause (b) of this Resolution, namely, 'that Advisory Councils be formed to help the Magistrate-Collector in the discharge of his executive duties.'

"The able speech of the Hon'ble Mr. Arthur to which we have just listened, has given full and weighty reasons why the proposed Advisory Councils are quite unsuitable for the purpose for which they are proposed and, if appointed, would have a most undesirable effect on the district administration.

"To form an opinion as to the desirability or otherwise of the proposed Advisory Councils, the following points must be considered ?

First.—Is there any need for Advisory Councils ?

Second.—Will such an Advisory Council, if constituted, assist the Collector in the discharge of his executive duties ?

Third.—Will they lead to the Collector's duties being discharged more efficiently than at present ? and

Fourth.—If such Councils would theoretically have the above effect, is it practicable to constitute an Advisory Council that will be able to give advice of any value on the many and varied matters with which the Magistrate-Collector has to deal in the discharge of his executive duties ?

"The idea underlying this proposal appears to be that it is necessary to bring the District officer into closer touch with the people, and is based on the assumption that at present he is not in touch with the people.

"The Hon'ble Mr. Arthur has shewn for the Bombay Presidency that this is not the case, and as regards the Provinces of Bihar and Orissa and of Bengal, in both of which I have an extended experience of district administration, both as a Magistrate-Collector and as Commissioner, I can also state with absolute assurance that it is not the case. The assertion that the District Officer is not in touch with the people is generally made by those who have no first-hand knowledge of the facts. But, unless contradicted, it is liable to be accepted.

"In Bihar and Orissa and in Bengal every Sub-Divisional Officer has to be on tour throughout his sub-division for a period, generally of four months, in the year, and District Officers for a period varying from three months to four months according to the size of the district, and other considerations. During this time, they are brought into direct contact and relation with the people. The subjects to which they are directed to devote their attention during these tours cover all matters affecting the welfare and condition of the people, and are such as bring them into direct touch with the people in all aspects in which the administration affects their life and interests. When on tour, the Collector has the opportunity of consulting all classes of local opinion, not only of the classes who would be represented on the proposed Advisory Councils, but also of the villagers themselves in their own villages, and of ascertaining their interests. Similarly, in the higher appointments, Commissioners have to be on tour for three months or more, throughout their divisions.

"In addition to this, Assistant Magistrate-Collectors have to pass through a course of settlement training, and many of them are employed for some years on settlement, which brings them into close and intimate relation with the people in their rural life.

"I would therefore emphatically controvert any presumption, that Advisory Councils are needed with the object of bringing the Magistrate-Collector into closer touch with the people. They would, in fact, have exactly the opposite effect. At present the people know the Magistrate-Collector as the head of the district, to whom they can go. The creation of Advisory Councils would interpose a wedge between the Collector and the people, and so far from bringing them into closer touch would separate them.

"As regards the second point, namely, whether an Advisory Council will assist the Magistrate-Collector in the discharge of his executive duties, I think

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that there can be no question that they will not ; but will, on the other hand, impede him in their discharge and render it less efficient.

"In the criminal administration of the district, in the outbreak of epidemics, in floods or other sudden emergencies, it is prompt and not deliberated and delayed action that is needed.

"Another serious objection to Advisory Councils is that they would do away with the reliance and confidence of the people in the impartiality and justice of the Collector, which at present exists. The Members of such a Council, apart from possibly having their own interests, might be liable to outside influence ; and whether such Council influenced the Collector or not in his action, it would always be believed by ignorant persons that it did so, and that his actions were liable to be affected by outside influence.

"There is also the possibility of opposition of the Advisory Council on personal, or interested, or party, or other special grounds, which will lessen the Collector's authority, weaken his action, and have a most injurious effect on his authority and on the respect which it is necessary that his orders should carry in the district.

"Another important objection to the proposed Councils is that it will create divided responsibility ; as the Collector will feel that he has the advice of the Council to plead in defence of his actions. It is most important, I venture to say, for efficient district administration that the District officer should feel that he is entirely responsible to Government for all his acts.

"If the functions of these Councils are to be *advisory only*, the necessity for them does not exist, as the Collector has at present the recognised representatives whom he can, and does, consult when occasion arises, the Members of the *Municipal Committees*, and of the *District and Local Boards*. He can also consult the leaders or representatives of any section of the community, or of any particular locality, if any special or local question arises in which he feels that their advice would be of assistance.

"An argument that is put forward in favour of the proposed Councils is that they will lead to *continuity of administration* and that at present a Collector takes charge of his district without any knowledge of it, and it takes him at least a year to become acquainted with it. This argument, however, loses the greater part of its force from the fact that a District officer when making over charge to his successor has to leave a note of all special matters of the district administration. Many of the most important of which are of a confidential nature, whose place could never be supplied by the continuity of an Advisory Council. There are also in Bihar and Orissa and in Bengal most complete District Gazetteers, which give the Collector full information of the conditions of the district. I admit that it takes a new Collector some time to get to know his district personally. But the knowledge that is essential, the personal knowledge at first hand, comes, not from consulting an Advisory Council, but from his first touring season in the district.

"Lastly, even if Advisory Councils would be of assistance to the Collector in his executive duties, or would lead to greater efficiency in their discharge which, as I have shown, is not the case, it would not be possible without making the Council of unwieldly size to create a Committee which would be able to give the Collector advice of any value on the many different subjects of administration and the many different purely local questions, with which he has to deal. The Hon'ble Mr. Arthur has shown us how very diverse duties are.

"For these reasons, I must oppose the Resolution for the constitution of Advisory Councils."

The Hon'ble Sir Gangadhar Chitnavis :—"Sir, my humble experience points to the conclusion that, as a matter of principle, the recommendation embodied in the first of the three clauses of the Resolution is good, and should be supported. But it must at the same time be recognised that the claim or fitness of a particular local body to have a non-official chairman must

[*Sir Gangadhar Chitnavis.*] [19TH MARCH, 1914.]

be determined upon the merits. Local circumstances play an important part, and it is difficult to lay down an inflexible rule. Broadly speaking, sufficiency of competent men and absence of faction premised, direct official connection with the boards should be withdrawn, and supervision, if any, I mean official supervision, should be exercised from without and not from within. This condition is fulfilled in the case of District Councils at important centres in the Central Provinces, where public-spirited and capable non-officials are found in decent numbers.

“ Chairmen of District Councils at those places may therefore be recruited with advantage from non-official members. I am sorry I cannot agree with the Hon’ble Mr. Abbott in his wholesale condemnation this morning of non-official chairmen of local bodies in this country. Councils that have non-official chairmen in the Central Provinces have justified the confidence reposed in them by Government. It follows that in rural areas the absence of the favourable condition mentioned above makes experiment in the desired direction difficult. Local Boards, which correspond, I believe, with the sub-District Boards mentioned in Mr. Dutt’s recommendation, must therefore continue under official control. I here speak of the Central Provinces only. I am not competent to offer an opinion about the local conditions in other Provinces. As far as I can see, the dispute is not at all about the principle. The Government policy has all along been to encourage and develop local self-government on the suggested lines, but expansion is necessarily a process of slow evolution, and its success depends to a large extent upon co-operation between officials and the local bodies.

“ I cannot accord the same amount of support to the second recommendation about Advisory Councils, though I have the highest respect for the memory and opinions of the late lamented Mr. Romesh Chandra Dutt whose idea it was. I have more than once expressed the conviction that they should not be associated with district administration. Both before the Decentralization Commission and in this Council I have maintained that position. My views on the point remain unchanged. The District Officer would no doubt be well advised to seek the advice of prominent non-official gentlemen on special occasions, but this he does already. More than this will not be sound policy in my opinion. With due deference to what has been said this morning by the Hon’ble Babu Surendra Nath Banerjee, I still think that division of responsibility in district administration has its risks which had better be avoided. Divisional Commissioners, who are generally officers of mature experience with a sufficiently large charge, may have Advisory Councils. The material for such Councils is ampler in their case and the risks of mistakes are less, especially because the consultation will ordinarily be about general lines of policy; but here too I would not make such opinion binding on the Commissioners. The responsibility must in all these executive matters remain undivided. There are emergencies, as pointed out by the Hon’ble Mr. Arthur and the Hon’ble Mr. Walsh, when it is necessary that District officers should take immediate action, and it is undesirable in the public interest that their decision and action on such occasions should be fettered or circumscribed in the manner suggested in the Resolution.

“ On the third head I have very little to say. When concerted action among several scattered units becomes desirable, it is obviously advantageous to have a sort of joint board for particular purposes. The principle has been followed in the Central Provinces, and we have for each Division one Local Fund Engineer, *i.e.*, an officer for a number of districts. The system initiated by the Hon’ble Sir Reginald Craddock, as Chief Commissioner, has worked well. It is economical and prevents waste. In the present complex administration, efficient and economical arrangements have a paramount interest for us. Joint action in selected spheres has great possibilities for good. But the main thing is to find out from experience the lines where such action among the local bodies can be taken. I support this principle too. It must, however, be clearly understood that in all such matters the local administration should before it introduces any such reforms, ascertain the extent to which these

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Sardar Daljit Singh; Raja Kushal Pal Singh.]

reforms are necessary and desirable in view of the economic development, of civic morality and of intellectual culture of the people committed to its charge."

The Hon'ble Mir Asad Ali Khan :—"Sir, while I appreciate the motive that prompted the speeches of the Hon'ble Mr. Arthur and the Hon'ble Mr. Walsh, I am still of opinion that Advisory Councils in selected areas, if formed, cannot fail to be helpful to the Magistrate-Collector. Such Councils, while not interfering with his executive functions, may offer him valuable suggestions and thus help him to solve more successfully several complicated questions affecting district administration.

"In describing the functions of a Collector the Hon'ble Mr. Arthur seemed to have very nearly exhausted the catalogue of human activities. It is for the very same reason, *viz.*, that a Collector has too numerous functions that an Advisory Council is suggested as a helpful course."

The Hon'ble Sardar Daljit Singh :—"After the speeches I have heard, I am inclined not to give my silent vote against the appointment of Advisory Councils for Collectors. Such restriction of the powers of a responsible officer like the Collector is sure to create many difficulties in good administration in the country. Private responsibility in the matter of district administration is likely to give trouble where there is so much party spirit."

The Hon'ble Raja Kushal Pal Singh :—"Sir, in the United Provinces, the Magistrate is not *ex officio* Chairman. The District Board regularly goes through the formality of electing its own Chairman, and may, if it chooses, elect a non-official gentleman, but in practice the office of Chairman is always held by the Magistrate and the Government has not yet thought advisable to permit election of any other person. The District Magistrate being the Chief Executive officer of the Government in the district, it follows that his election as the head of the District Board introduces Government control from within rather than from without. There is a general feeling in the United Provinces that District Boards have practically become a department of the Government administration, that their work is done by an official element within the boards themselves and that their proceedings are subject to excessive outside control. In my humble opinion in all these districts where suitable non-officials are available and special obstacles do not exist, they should be allowed to be elected as Chairmen. Even if it is thought necessary that in the present circumstances the Magistrate should remain Chairman of the District Board, I think that the Government of India should urge upon the Local Governments the desirability of giving effect to the following recommendation of the Royal Commission upon Decentralization in India :—

At the same time the Collector-president should not arbitrarily over-ride the opinions of others, but should be a sympathetic Chairman, and should bear in mind that not the least important of his functions is to assist in the political education of the members.

In paragraph 534 the Royal Commission upon Decentralization in India say,—

We consider that the District Boards, which include leading officials of the district as well as representative non-officials, afford a convenient instrument for furnishing advice to the Collector upon matters which, although not included in their administrative sphere, affect the district generally, or important portions of its area or people. We understand that some Collectors do already make use of their district boards in this way; but we should like this practice extended.

In the footnote it is mentioned that Mr. Meyer, now the Hon'ble Sir William Meyer, would like to see it made general. The above recommendation of the Decentralization Commission, especially that of our distinguished Finance Member, will be a step forward in the direction of co-operation between officials and non-officials, which is greatly to be desired. In support of

[*Raja Kushal Pal Singh ; Maharaja Ranajit Sinha* [19TH MARCH, 1914.]
of *Nashipur.*]

this recommendation I rely on the opinion expressed by the Hon'ble the Home Member in opposing a similar resolution moved by the Hon'ble Mr. Gokhale.

" He said—

There is nothing that surprises me so much in all the speeches that I have heard as the apparent contempt with which the speakers have referred to such bodies as District Boards and the members of the District Boards and Municipalities."

The Hon'ble Maharaja Ranajit Sinha of Nashipur :—

" Sir, with your permission, I will take up item by item, the Resolution which my Hon'ble friend on my right has just now moved. In the first part of his Resolution he says that the Presidents of district and sub-district boards should be elected. My experience in this respect is limited to Bengal, where the sub-district boards which are known by the name of local boards have got the privilege of electing their own Chairman, and in the majority of cases they do elect one of their number as Chairman.

" As regards the district boards I should like that the franchise may also be extended, but the difficulty is that the Chairman of a district board has not only to preside at the meetings of the board and to look after the office duties, but he has also to make tours throughout the district in looking after the roads, bridges, pounds, and sanitary and educational wants of the different local boards situated within his district ; and so it will not be possible in every district to get a suitable man among the non-official gentlemen who will be able to devote their time and energy to do the duties which the chairman of a district board has to perform now-a-days. But, Sir, I think an experiment might be made in some of the advanced districts where suitable persons can be had who may be willing to undertake such duties. But, Sir, I think that the meetings of the district board should not be presided over by the Magistrate of the district. In cases where the Chairman is the Magistrate, I think the meetings should be presided over by the Vice-Chairman of the district board. The members would then be able to discuss matters much more freely than they can do so at present out of regard and respect for the head of their district, which makes them reluctant to contradict or overrule him in many matters in which he goes opposite to their views.

" As regards the Advisory Councils for which my Hon'ble friend has asked, he has not said in his speech whether he wants to vest these Advisory Councils with any statutory powers. I am not one, Sir, who can recommend that the Magistrate should be hampered in his duties by the creation of Advisory Councils with some statutory powers so as to overrule him in his discretion in any administrative matter. But if the Advisory Councils are not vested with any statutory powers, I think those bodies would be quite useless, because they would not be able to compel the Magistrate to accept their views, though of course it is desirable that the Magistrate should have some chosen advisers whom he may consult as regards important matters of administration. It is said that district boards are equivalent to Advisory Councils in some places. My friend the Hon'ble Raja Kushal Pal Singh has also said so. But as far as my experience goes as regards Bengal, in Murshidabad district, where I had been a member of the district board for upwards of 15 years, I never found a single instance in which the Magistrate consulted any member of the district board as regards any administrative matter. Still, I am not in favour of hampering the work of the Magistrate and Collector by creating any council which may have any power to overrule him or to fetter his discretion in the administrative functions which he has to perform.

" As regards the third part of the Resolution, I have no objection to Local Government boards being formed in each province for exercising control over rural boards and municipalities ; because now-a-days I think sanitation forms an important part of the programme of municipal and rural areas, and it is necessary that there should be a board to supervise the work in those respects."

[19TH MARCH, 1914.]

[*Mr. Wynch.*]

The Hon'ble Mr. Wynch:—"Sir, when I first read this Resolution I was inclined to view it very much in the same light as the Hon'ble Mr. Arthur, who has, it seems to me, very fully exposed the impracticability of associating an advisory council with the Collector to assist him in the performance of his ordinary every-day executive duties

"But as I listened to the Hon'ble Mover's speech it seemed to me that he did not advocate quite such a close association of the Council with the Collector as all that. I understood him to say that the scope of the advisory council's functions should be prescribed by Government. The only instance he gave us in illustration of his proposition, indicating its utility, was that such councils would have been of immense use to Collectors in Bengal at the time of the partition of that province.

"Well, Sir, taking this view of the functions of the advisory councils, I must say that I do not see any need for them. In Madras we have District associations, sometimes Taluk associations, District and Provincial conferences, and the Legislative Council, to say nothing of the Press, and it does not seem to me that there is any necessity to add to all these sources of information as to the wants and wishes of the people by the appointment of advisory councils. If the opinion of these councils is to be taken only on questions of such widespread interest and importance as, say, the partition of a province—or possibly, the separation of judicial and executive functions, or the enlargement of the Legislative Councils, then I am afraid the occasions on which they will be convened will not be very frequent. As private Secretary to His Excellency the Governor of Madras for five years, I had the unique opportunity of learning something of the wants and wishes of the people of that province from one end of it to the other as expressed in addresses presented by Municipal Councils, District Boards, District Associations, deputations of ryots, Planters, and local associations of all sorts and kinds; and speaking from that experience I should say that the most striking feature of those representations was, if I may use the term without any disparagement, the extremely parochial nature of the requests made.

"Now that is precisely my own experience as a Collector and District Officer. The matters affecting the interests of the people, outside the ordinary every-day routine of administration are such questions as irrigation projects, railway projects, Forest grievances, town-planning schemes, schemes for improving congested areas, sanitation and water supply. Now with regard to these the people on the spot are consulted as a matter of course and their wishes ascertained as far as possible, and I cannot see what possible advantage an advisory council would be to a Collector in such cases, even if, as suggested by the Hon'ble Mr. Banerjee in the first part of his Resolution, the Collector is to be divorced from the District Board. In such a case the Collector, I take it, would prefer to work with and through the District Board in dealing with questions coming within the sphere of that body and in the same way with regard to Municipal Councils and so forth, rather than with an outside irresponsible body such as an Advisory Council.

"There is only one other point that I wish to touch on in the Hon'ble Mover's speech, and that is, the statement which he makes on the authority of the Decentralization Commission that Collectors now-a-days are so immersed in work, and so ignorant of the vernacular, as to be out of touch with the people of their Districts.

"I think that this statement is being pressed a great deal too far, and in support of the protest made by the Hon'ble Mr. Arthur, I should like to refer the Council for a moment to the proceedings of a debate in the Madras Legislative Council which took place last November. A resolution was moved by a non-official member that 'This Council recommends that the Governor in Council may be pleased to issue instructions that every District Collector do hold a conference of the leading ryots of his district in the principal town of the district in the beginning of each official year, etc.' In moving that resolution the Hon'ble non-official member said that 'the

[*Mr. Wynch ; Rai Sri Ram Bahadur.*] [19TH MARCH, 1914.]

Collector of a district now-a-days is so fully occupied over his daily official routine of work that he finds it hard to spare time to go about and mix with his ryots, to learn first-hand direct from the ryot what his needs and wants are.' And other speakers followed in much the same strain. The Chief Secretary the Hon'ble Mr. Horne in reply said: ' It seems to be an accepted article of belief, conventional belief, that the modern district officer is a mere clerk, a glorified file-shifter, who is tied to his table and so immersed in a sea of papers that he never goes out into the district, never sees things for himself, but sees everything through the eyes of interested subordinates and cannot be approached by the ryots. Now, Sir, that is not the case. I have been a district officer myself for most of my service and have travelled about the district of this Presidency for more than thirty years.' He then went on to twit one Hon'ble Member who had supported the resolution for forgetting the lessons that he had learnt when he served on the Forest Committee which travelled over a considerable portion of the Presidency. He said—

It is within my recollection that my Hon'ble friend when brought into contact with district officers doing district work, could hardly refrain from expressing his almost pathetic astonishment at finding that his beliefs were wrong and that these officers were not secluded behind a cordon of peons and orderlies; that they moved about in the villages alone and unattended; that they were careful to see things for themselves; that they were not instructed by interested subordinates; that any one who wished to speak to them could do so; and that they were not entirely ignorant of the vernaculars.

"A non-official member who followed admitted that there was a good deal of misapprehension on the point and that too much had been made about district officers not knowing or understanding the wants of the people. What the Hon'ble Member did plead for was that there should be more latitude allowed to Collectors so as to, make the Government more personal."

"Now, this ideal, which I may say is the tradition handed down in Madras from the days of Sir Thomas Munro, whose minutes were quoted in the course of the debate I have referred to, seems to be totally incompatible with the ideal of advisory councils, if, as inevitably would happen, their functions were to be extended, as the resolution in fact suggests they should be, to associate with the Collector in the administration of his ordinary every-day executive functions."

The Hon'ble Rai Sri Ram Bahadur :—" I rise, Sir, to support the Resolution though not in its entirety. The first portion of the resolution relates to the election of Presidents of District Boards and sub-district Boards. I know that the Decentralization Commission has not recommended this step; but that Report was written in 1909, and it was based on evidence which had been taken in the year previous; so that, more than 6 years have now passed, and as the Hon'ble Mover of the resolution has said, India is advancing and the times in which we are moving are different from what they were six or seven years ago. I support the resolution to this length, that though not in the province as a whole but at least in selected districts of the province the experiment should be tried, and non-official persons should be allowed to be nominated or elected as chairmen of the District Boards. There was a time, Sir, when it was apprehended that if a district was to be placed under the sole charge of an Indian, difficulties might arise, but experience has shown that it is not so, and the districts under Indians are as ably administered as districts under Europeans. Therefore, Sir, as I have already said the time has come when there should be a relaxation made in the rule and the expression of opinion which was made by the Decentralization Commission should not be adhered to.

' Sir, I take up the second part of the Resolution, which is that Advisory Councils be formed to help the Collectors of Districts in the discharge of their executive duties. The Hon'ble Mr. Arthur and the Hon'ble Mr. Walsh have given a formidable schedule of the duties which are performed by the Collector of a district; but, as I understand the wording of the resolution, and as the

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Hon'ble Mr. Wynch has said just now, the Hon'ble Mover simply asks for advisory councils. He does not mean that in any matter brought before the members of the council, the Collector should be bound to follow their advice; all that the resolution asks for is that a council of this sort may be started, and if the advice of the members be sound and the Collectors find that it is worth listening to, he may follow their advice; it does not mean that any advice that the members give should, as a matter of course, be accepted. I can give, Sir, two instances from the United Provinces, in which the principle has been given effect to. That far-seeing statesman, Sir John Hewett, our retired Lieutenant-Governor, has done two things in this respect, one by statute and the other by standing orders. By statute he has embodied in the Court of Wards Act, which was passed in the year 1912, a provision that each district officer should have a district advisory committee to advise him in Court of Wards matters. The rules lay down that it is not incumbent on him to follow the advice; but it will place the Collector, who is *ex-officio* in charge of the Court of Wards, in a position to gauge the feeling of the public in regard to matters on which the advice is sought, these committees have been constituted, and they are working in consonance with the district officer. The second measure which was introduced by Sir John Hewett in the standing orders issued by him was that divisional conferences should be called in the United Provinces. The Commissioner of a division calls together a select number of people from his division, and asks their advice on points which are of public importance; and opportunity is also given to the gentlemen so assembled to express their views and to propose any measure that they consider to be for the welfare of the people. These are the ways in which the advisory councils can be formed.

"As regards the third point, Sir, so far as the United Provinces are concerned, I do not think there is any necessity for the establishment of a Local Government Board there. We have a Sanitary Board in the United Provinces on which there are non-official members also; and so far as matters of sanitation and cognate subjects are concerned, the Board does discharge its duty properly, and the non-official members are in a position to put before the Board the views which are entertained by the people of those provinces. Therefore, Sir, I support the Resolution only so far as the principle of the formation of advisory councils is concerned. As regards the third point, there is no necessity for a Local Government Board in my province."

The Hon'ble Maharaja Manindra Chandra Nandi of Kasimbazar :—"Sir, I beg leave to support this Resolution. It may be contended on behalf of the Government that these recommendations are based on the opinions of a single member of the Royal Commission and not the unanimous opinion of the Commissioners. Considering, however, the great weight that attaches to the considered and mature opinions of the late Mr. R. C. Dutt, I think his opinions are well worth acceptance by the Government of India. Of special importance are the recommendations for the formation of Advisory Councils to help the Magistrate-Collector in the discharge of his duties without hampering his executive power and a Local Government Board in each province for exercising control over rural boards and municipalities. It is the laudable desire of the Government to bring the administration into close touch with the people and this object can be well served by the creation of Advisory Councils to help the Magistrate-Collector in the discharge of his duties. The next proposal for the formation of a Local Government Board has obvious advantages, which will be apparent to the Government; and it is not necessary that I should take up the time of the Council by attempting to labour the point."

The Hon'ble Major Blakeway :—"Sir, the Hon'ble Mr. Banerjee's interesting Resolution, like his last resolution, reflects his desire to advance the cause of self-government in India, but I should like to venture

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a few criticisms on clauses (a) and (b) regarding the election of the Presidents of Rural Boards and the appointment of Advisory Councils for Collectors in the light of my own experience of district administration.

“ So widely do the degrees of progress towards complete local self-government differ in the various provinces of India that whereas in the Central Provinces proper the President of the District Board is elected and is generally a non-official and whereas in those Provinces, also, 2/3rds of the members are elected by *Tahsil* Boards and representatives of mercantile classes and professions, in the North-West Frontier Province, which I have the honour to represent on this Council, the Deputy Commissioner (corresponding to the Collector of the District in a Regulation Province) is *ex officio* President and the District Board members are all nominated. Between these two extremes in provincial methods lie almost all the variations which are possible in the systems of election and nomination of the President and Members of Rural Boards. But the Hon'ble Mover wishes to start removing the official heads of these offending bodies in a spirit reminding me of the queen in a certain well known and popular story book whose favourite solution of any little difficulty found expression in the order.—‘ Off with his head,’ regardless of the circumstances of her victim's case or his possible excuses. On behalf of my Province I may say that we cavil in no way at the policy enunciated in Home Department Resolution of the 18th May, 1882, which was issued by Lord Ripon's Government and has been freely quoted to-day to the effect that the extension of local self-government then inaugurated was primarily not to reform administration, but to serve as an instrument of political and popular education. Our acceptance of this policy is evinced by the fact that the extension of the elective principle to a proportion of the members of our Municipalities is at the present moment under consideration. But in the case of our rural communities, I would assure the Hon'ble Mover that at their stage of development they are not prepared for the advance which he would like to see made and has embodied in a Resolution of so general and sweeping a character as that now before the Council.

“ As regards the actual merits or demerits of the proposal to substitute elected for nominated or *ex officio* Presidents, I might ask the Council to rely on the fact that after an exhaustive examination of the subject the Decentralization Commission, with the exception of the late Mr. Dutt, recorded their opinions against this proposal as also against the other proposals embodied in the Resolution. But, since Hon'ble Members are of course at liberty to form their own conclusions, in place of making this appeal to them to accept the opinions of another body however authoritative, I would urge them to consider the advantage, where the system of District Boards and official Presidents already exists, of continuing to associate the District officer, who can be trusted to have the interests of his district at heart, with the leading men of the neighbourhood in the friendly discussion of local projects connected with roads, education, medical relief, sanitation, etc. If the election of Presidents were generally introduced, to require the Collector to submit himself to election would depreciate his authority, as pointed out by the Commission, and in most cases the measure would of course imply that the Collector would vacate his seat. In this matter, I do not lay undue stress on the loss to the District Board of his administrative experience. If we accept the fact that local self-government is to be educative we can make up our minds to some administrative drawbacks. But what I wish to emphasize is, that even in those localities where competent Presidents may be forthcoming, this joint association of the District Officer and the principal residents in work for the public welfare is in itself a definite and very real political asset in the administration of the country. It brings together the Collector and the leaders of the people, it enables the Collector to some extent to sound popular opinion on matters not directly connected with District Board proceedings, and provides him with a convenient opportunity, should necessity arise, of explaining measures with regard to which misapprehensions may have occurred on the part of the public. All this is sacrificed if the Collector be separated from the Board, and

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I suggest that the adoption of such a measure would furnish immediate ground for the charge, which, with or without justification, is frequently levelled against Government regarding the growing aloofness and detachment of the administration. In a lesser degree those remarks must apply also *mutatis mutandis* to Sub-district Boards, though of these I cannot claim personal experience

“ Now, Sir, coming to clause (b) of the Resolution regarding the appointment of an Advisory Council to the Collector, a matter which has been debated before in this Council, I dare say that it may be argued, as indeed it has been argued by the Hon'ble Mover, that the difficulty, which I have suggested as being involved in the disassociation of the Collector from the Presidentship of the District Board will be met by giving him this Advisory Council. The Collector, it can be urged, will thereby be enabled to meet the local men of importance and to talk over current topics with them. He will be kept in touch with local opinion, while they will be enlightened regarding the motives of Government. But at the best I can only describe the creation in a district of an additional Committee of Advice in such circumstances as a cumbrous administrative expedient. I fail to see the advantage of the formation of another local assembly when a District Board and one or more Municipalities already exist, and when moreover the very members of this proposed Advisory Council would almost certainly be members of one or other of the existing local bodies, as these bodies are always composed of the men whose social position or personal talents have raised them above their fellows. Another argument against an Advisory Council, though, as this has been dealt with by the Hon'ble Mr. Walsh, I need not labour it, is that it is very possible that the existence of official advisers, whether or not the Collector might be at liberty to dissent from their advice, would lessen the sense of responsibility of a district officer for official acts performed in accordance with their recommendations, a consummation which would be most undesirable. If, Sir, you will pardon a remark, which verges on a platitude, I would say that there is nothing so detrimental to good administration as an elusive responsibility.

“ The Hon'ble Mr. Vijayaraghavachariar referred, during the debate on the last Resolution, to a defect in Lord North's Governing Constitution of 1773, namely, its excessive centralization, of which the correction was undertaken by the Indian Councils Act of 1861. But, as regards division of responsibility, I should like in support of my own case to quote the estimate of the chief cause of the failure of that Governing Constitution, which is given in the work “ British Dominion in India ” by that distinguished officer and litterateur, Sir Alfred Lyall. I now have this volume under my hand. Sir Alfred Lyall, at page 179, remarks that,—‘ It is easy now to perceive that this ill-constructed governing machinery, which stands towards our latest systems in the same relation as does the earliest traction engine to the present locomotive, contravened some primary principles of administrative mechanics,’ and goes on to say, ‘ But in 1773 the chief executive authority at Calcutta was vested in a majority of the Council—the Governor General having only a casting vote—so that in a Government, where promptitude and unity of action were all important, every order was arguable; and where opinions differed, no measure passed without violent controversy’.

“ The Hon'ble Mover has not favoured us with any information as to how he would like his scheme to work in practice, so I do not claim a parallel between his Advisory Council and the Governing Constitution in the practical details of his scheme, whatever they may be. I think, however, that the picture of that lamentable controversy within a Council, given us by Sir Alfred Lyall, in consequence of an ill-conceived measure, should be kept constantly before us.

“ But these objections—the multiplication of local bodies and the dispersion of responsibility—might be accepted perhaps, supposing that a Collector could be certain of receiving the best advice from an Advisory Council, and that this advice could be obtained by him in no other way. It is, however, when we

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come to examine this aspect of the matter, I fear, that the Hon'ble Mover's case proves weakest. It is impossible to conceive a state of affairs where a Collector would not invariably seek and obtain the opinions of his Indian visitors likely to be of value to him and these private interviews would still remain open to him even if he were debarred from the Presidentship of the District Board or Municipality and, *pace* the Hon'ble Maharaja Ranajit Sinha, from opportunities of initiating informal discussions at meetings of these bodies on matters of general interest after disposal of the regular agenda. Again, as the Hon'ble Mr. Arthur has pointed out, why should a Collector be limited to certain official advisers even if he is free to accept or reject their advice? Surely he should not only be allowed but encouraged to get the very best and most instructed expert advice on every one of the very numerous subjects which come up for decision in district administration, wherever and however that advice is obtainable. The whole district should be open to him for the purpose. I can imagine that as regards a question of crops or irrigation a peasant working in a field outside the Collector's gate might be a most competent adviser, that no one would be so well suited to voice the objections to a tax on hawkers as an itinerant sweetmeat seller, and that a master in a Primary School might have valuable notions on the subject of the co-operation of village headmen for the extension of education, while I am certain that many a prisoner's remarks on the subject of jail diet would be well worth hearing, even if they could not be quoted. I mention these few instances to show the diversity of advice needed by the Collector, the possibility of his obtaining it on occasion from the lowliest members of society with whom, so far as my own Province is concerned, he would certainly be able to converse, and the impossibility of getting together a body of competent men whom he could consult with confidence on every occasion. It would be an awkward situation, also, both for the Advisory Council and the Collector, though I have no desire to lay especial stress on this possibility, should some measure under discussion be entirely opposed to the personal interests of all or most of the Councillors.

"In these circumstances, Sir, to sum up my view of the case, the proceedings of an officially constituted body, with the functions advocated by the Hon'ble Mover, would inevitably tend very soon to become purely formal, and his Advisory Council would be of no more practical use in the every-day work of a district officer than a ceremonial Durbar. Its drawbacks as a consultative body, therefore, appear to me to be even greater than its administrative disadvantages, which I have already discussed, and on the grounds stated, I must oppose the Resolution."

The Hon'ble Srijut Ghanasyam Barua:—"I consider the first part of this three-headed Resolution to be of the greatest importance, and I have already expressed my views as to the part that the scheme of local self-Government is expected to play in the development of the constitutional ideas of the Empire. It is my earnest conviction that if real and fairly rapid development of the scheme of local self-Government among the bulk of the people is aimed at, it should be made a cardinal principle that the president of all Local Boards and all Municipalities should be an elected non-official, the District and Sub-divisional officers always standing aloof from the Chairmanship and guiding the Boards from without. In the Resolution of the Government of India of 1882 it was made perspicuously clear how the presence of the head of the District or Sub-division even as a member of these Boards would operate as a drawback to the free ventilation of opinion and the real education of the people. Indian opinion has repeated itself again and again that that is the true view of the case. Lord Morley declared himself in perfect accord with that view and approved the arguments on this head in unmistakeable terms only a few months before the publication of the Report of the Royal Commission upon Decentralization in India.

"It is extremely disappointing to find, Sir, that the Royal Commission in spite of all this came to a different conclusion with regard to the Chairman-

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ship of District and Sub-district Boards and put the Indian Member of the Commission (who must have himself filled the offices of the District and the Sub-divisional officer during his career of service) to the necessity of recording the note of dissent in question. One may reasonably suspect that their decision was influenced by official opinion, and that that opinion was weighed by considerations of power. But even for power as the Resolution of 1882 pointed out Lord Ripon's scheme affords an ample and higher field if only it be taken and worked in the right spirit. It is certainly more honourable to be an Examiner than a teacher, and to be a teacher than a class mate of superior parts. That was the sort of better power that the District officers were asked to aspire for; and unless it be incapacity that should deter them from looking for it there is little reason to despise it. 'It really opens to them,' the resolution set forth, 'a fairer field for the exercise of administrative tact and directive energy.' They should really be proud of thinking themselves above the Boards by taking the position of teachers and guides for them, without being one of their members however useful his position as such might be for purposes of efficiency.

"With the greatest deference to that august body, I venture to submit that the reasons advanced by the Royal Commission in support of their conclusions do not appear to be quite convincing. To make myself clear I crave the indulgence of the Council to allow me to go into the issues raised a little in detail.

"(1) Their first argument is that though a quarter of a century had passed since the pronouncement of Lord Ripon's Government the position that rural boards should elect non-official Presidents was, as regards district boards, reached only in the Central Provinces.

"Now, Sir, analysed with only a little care, this argument results not in favor but against the conclusion drawn, namely, that in the present circumstances the Collector should be the president of the district boards. The Resolution of 1882 distinctly pointed out that if success was to be achieved the people themselves were to be entrusted with real power and real responsibilities; that where that had been done in the past, results were always encouraging. The Resolution insisted that even if there were failures and disappointments in some cases,—and such were only reasonable to expect—the policy was to be earnestly pursued with temporary checks and suspensions and good results were bound to follow. Now why has the position been reached in the Central Provinces and not elsewhere? It cannot with any seriousness be argued that the Central Provinces are superior to Provinces like Bengal, Bombay, Madras or even the United Provinces in either education or instincts of self-government. Then why have the Central Provinces attained the object and the others not? The only answer that forces itself upon us is that Lord Ripon's policy was pursued there and that by sincerely following it even a second grade province, like the Central Provinces, have come up to a good standard of efficiency. It would have been a good argument if the Commission could shew that repeated attempts were made with elected non-official chairmen in such and such places but they always failed. But the fact relied upon by them only proves that the other Provinces have not been given a fair chance in spite of the declared intentions of the Government of India and the Secretary of State. Mere provision in the Act is nothing, unless the official position is voluntarily given up.

"Sir, there are more reasons than one why Boards in which the Chief District official plays a direct part have not been able to elect non-official chairmen although almost all the Local Self-Government Acts provide for such election. The first and foremost reason is given by the Commission itself, *i.e.*, that when the District or Sub-divisional officer stands as a candidate, his defeat by a rival candidate would impair his authority in the district. The result is that neither a rival candidate is easily available nor a sufficient number of members to support one, if one had the boldness to come forward. Indeed few men will venture to offend him by so impairing his authority.

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"Secondly, a feeling is general that there is no possibility of free action in these Boards and that a member must be prepared either to automatically endorse the proposals of the official Chairman or to expose themselves to the risk of unpleasantness. The consequence is that many capable and energetic men keep aloof and consider it better wisdom to do so.

"Thirdly.—There is, as far as I know, no suitable provision for the recoupment of expenses of travelling. A Chairman will no doubt have to work, if he works properly, at some sacrifice to his income and profession. That much may be set against his public spirit. But always to spend from his own pocket even out of public spirit is too much to expect or justify. We do not expect that even from the Members of this Council or of the Parliament.

"(2) The second ground taken is that to remove the Collector from the post would be to dissociate him from the general interests of the district and instructed public opinion in some local matters and that he will be converted to a mere tax-gatherer and repressor of crime. Although the importance of these two powers is sought to be minimised, I don't think they are small powers by themselves. But I am glad that the Hon'ble Mr. Arthur and the Hon'ble Mr. Walsh have given a long list of powers with which district officials may well afford to remain satisfied and think they should be able to do without the small power of being the Chairman of the Local Board. The idea really is not to dissociate him at all. He is desired only to look to them from outside the Board, and if the Board is amiss in any matter he should set it right by check, remonstrance and guidance. As a matter of fact local men will know better to deal with these interests and instructed public opinion in these matters will come more freely through and to the members of the Board than to the official head of the place, the members of the Board being necessarily more easily accessible.

"(3) The third point taken is that the Chairman of the District Board should be a man of administrative experience. I submit that this experience may be acquired by the non-official chairman as the officials do. If necessary, some preliminary qualifying tests may also be imposed. This argument does not, I may say by the way, apply to Assam where there are no District Boards, all sub-divisional Boards being independent.

"(4) Fourthly, it is said that general knowledge of the district and constant travelling is necessary. This requires, as I have said, only an impetus in the shape of travelling allowance.

"(5) Fifthly, they say that as the final decision rests with the collective body which will be the elite of the district, there should be no reason to fear that the presence of the Collector will prevent free ventilation of opinion. But that this is not the case has been repeatedly said by all men capable of giving an opinion. It is also proved on their own premises. In paragraph 794 they say 'the preponderance of non-official opinion especially in Madras, the two Bengals and the Central Provinces, is in favour of an elected non-official president'. This proves two things, first that in the Central Provinces where there are non-official presidents, they have been appreciated and are preferred to officials; (2) that where this is not the case—as in Madras and Bengal—it is the impotency of the members in the presence of the official Chairmen that has stood in the way of their having non-official Chairmen.

"(6) Lastly, they say that it is unfortunate that the Collector should be looked upon as an outside authority instead of as a necessary complement to the board. The question really is not of authority or efficiency, but of the best mode of teaching the people a higher civic life. The Collector's guidance is admitted to be necessary and he is desired to exercise all his directive energy to properly watch and train them up. But real popular education being found to be interfered with by his presence in the board, he is desired to exercise his power from without. It has been admitted that Collectors appeared to have in some instances been in the habit of ruling rather than guiding. Notwithstanding this, they express a hope that, though this is unfortunate, it should not be difficult to make sympathetic Chairmen of

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all Collectors in time. This hope, Sir, has been always expressed, from the days of Lord Ripon at least, if not earlier; but naturally enough expressed in vain; for it is really a matter of individual tendencies of men, and such tendencies cling to them in spite of advice or sermon. I do not think sympathetic is the proper word at all. Perhaps every officer is sympathetic in his own way, and he has not much reason to be otherwise; but it is the manner in which that sympathy is used and expressed which really matters so much. The question is whether he has always the capacity to express it in a way suitable to train up the members and whether they have the capacity to be free in their discussions when there is a difference of opinion with him; also whether, when the Collector is ready at hand to give the best decisions in all matters, it is possible for the members to have that practical training which would result from independent initiatives of their own, which alone can be real tests of education and experience. On the whole, Sir, this is a delicate position which deserves to be abandoned, when it is admitted that some Collectors have been arbitrary. The moral effect left on the members will naturally be that the impressions made by one arbitrary Chairman will be carried to many others who are not arbitrary.

"I submit it, Sir, as my sincere and earnest conviction that the cause of both the Government and the people cannot, in the present stage of India's development, be better served than by educating the people as much as possible to a higher level of civic life; and for the bulk of the educated class—the class which deserves the greatest attention in the matter—there can be no better field for this than the Local Boards. Intelligent non-official activity in these Boards should therefore be freely encouraged and all possible objections and drawbacks removed.

"With these expanded Councils at the top and the proposed village authorities at the bottom it would be only imprudence not to freely and rapidly develop these intermediate bodies which so intrinsically affect both the top and the bottom.

"If we want good exercise of discretion in elections to the Imperial and Provincial Councils, if we want the village authorities to be properly guided and advised, and if we want to strengthen the faith of the educated classes more and more in the character and ideals of British rule, we should, I think, freely use the District, Sub-District and Municipal Boards to train them up and to develop in them real public spirit and a real sense of public duties and responsibilities.

"We cannot ignore the fact that the English education so long given in our schools and colleges has been doing its work steadily. The younger generation are daily growing up full of advanced ideas with an awakening to higher ideals of public and private life. And unless these ideas and that awakening are properly controlled and guided and diverted from fantastic theories to healthy, practical fields of work, they will always be in danger of being misconceived, wasted or abused or of bursting out in uncongenial lines. I also feel that this popular and political education cannot be real or proper unless the members of these Boards become conscious of their free and responsible existence; and for this they should have Chairmen whom they can elect or depose at their pleasure and with whom they can have fearless discussion. It is only then that the members will be compelled to be intelligent workers and the Chairmen cautious guides.

"I therefore support the first part of the Resolution.

"With regard to the second part, my experience is with regard to my own Province (and I speak of my own Province only) and I do not think it is at all time for advisory councils for the district officer to be made compulsory. Of course the district officer in some cases may be given the option of having any representative or individual opinion that he wishes to have from the public, but to make it a rule that there shall be district advisory councils whose advice he will have to follow will, only, I think, work against the proper administration of the district by the district officer."

The President :—"The Hon'ble Member's time is up."

[*Mr. Madhu Sudan Das ; The Vice-President.*] [19TH MARCH, 1914.]

The Hon'ble Mr. Madhu Sudan Das :—"Sir, the discussion on the advisory Council which is a part of the Resolution moved by the Hon'ble Mr. Banerjee has brought into prominent relief a long and elaborate category of the duties of the Collector. It cannot be denied, nor has anything been said amounting to a denial of the fact, that the duties of the Collector have increased immensely within the last half century.

"If any one here of my Hon'ble Colleagues remembers what a Collector used to be half a century ago, how much he was in touch with the people, and what interest, I should say affectionate interest, he took in the people, I suppose he will join with me in saying that that Collector has disappeared like the Phoenix without leaving even his ashes behind. It is a matter of fact that the ever-increasing demands of an ever-increasing administration upon the time and attention of the Collector have practically driven him to take shelter against public intrusion, against visitors, behind a barricade of red tape, files and papers. The number of vernacular languages has increased. It has been considered a libel upon the Civil Service, and expression was given to that feeling by the Hon'ble Mr. Arthur, because it has been remarked in certain quarters that the Collector of the present day does not know the vernacular languages sufficiently well to mix with the people and to know the feelings of the people. There was a time, I remember, when it was proposed to abolish a certain language—the Uriya language—and actually to substitute the Bengali language in its place. Mr. John Beames took up the case. I should like any Collector of the present day to see all that he wrote on the subject, and tell me how many Collectors there are now who could handle a subject like that—a linguistic question—in the same masterly way that he did. Not only that but I know of grammars of vernaculars written by Collectors. Where is that Collector now?"

The Hon'ble the Vice-President :—"I must ask the Hon'ble Member to keep to the point. The point is that certain action should be taken now, not what Collectors were in the past."

The Hon'ble Mr. Madhu Sudan Das :—"Advisory Councils are not necessary. This fact has been very emphatically remarked by all the official Hon'ble Members who spoke on the subject. If the duties of the Collector have increased, and if the Collector feels it necessary that under the altered state of circumstances he should seek information from a certain body, and the Decentralization Commission say that he can have such information and such advice from the District Boards, I should say that that would be one reason why he should not be President of the District Board. Unfortunately, for some reason or another, the very presence of the Collector seems to have a paralyzing effect upon the tongue or some other effect upon the cerebral regions of the members so that they cannot give free expression to their opinions. But the Collector is at liberty to consult that Board without being its Chairman. It has also been brought to the notice of this Council during the discussion that the Presidents of the Local Boards are elected. On the other hand these District Boards send their elected representatives to the Council. And yet the District Boards standing midway between the Provincial Councils and the Local Boards, have not the power of electing their own Chairman. As a matter of fact the Vice-Chairman very often does the duty of the Chairman and, while he actually bears the burden of the work, and the Chairman, the Magistrate gets the credit for it, it is not likely that non-official gentlemen will find sufficient inducement to take up the work. Also in this connection one sees the very reverse of the natural order of things or what one would expect to be the natural order of things. We find that in the Central Provinces they have the privilege of electing their own Chairman and in the United Provinces too they have the same privilege. Considering that the Central Provinces and the United Provinces were always considered behind Bengal, I should have expected that coming from a still less advanced Province, we should have had the advantage of electing our Chairman. But it does not seem that a Province which is less advanced always has the advantage of electing its Chairmen. It seems as

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if the privilege of electing the Chairman—a privilege of local self-government had been extended to the people in an inverse ratio to their advancement in other respects. The simple reason seems to be, as was mentioned by the Hon'ble Sir Gangadhar Ohitnavis that this was introduced by the Hon'ble the Home Member when he was the Chief Commissioner of the Province, and I suppose the Hon'ble Sir Reginald Craddock has not left the reputation of being a very unsympathetic man behind him in the Central Provinces.

“With these remarks I support the first part of the Resolution that the District Boards should have the privilege of electing their Chairman.”

The Hon'ble Mr. Vijayaraghava-chariar:—“Sir, the Resolution consists of three parts. As regards part (a), it is exactly similar in principle to the four divisions of the previous Resolution, and therefore if I at all wish to say anything on the subject it cannot be very different from what I said on the previous Resolution. As regards the previous Resolution I thought the Hon'ble Mover had a very weak case, but as it occasionally happens despite the weakness of his case it derived strength from the weakness of the resistance of the Hon'ble Mr. Porter on behalf of Government who, instead of referring him to Local Governments, has given him hopes and said that the matter would be considered. So my opposition become futile. I will say nothing more on that subject, but at the same time I would beg to submit that my objections were not met either by the Hon'ble the Mover or by the Government. Therefore, I am perverse enough to adhere to my previous attitude. I oppose the Resolution, part (a).

“As regards part (c) that a Local Government Board be formed in each province for assisting and exercising control over rural boards and municipalities, it is also somewhat an important question; but I am not quite sure whether the Hon'ble Mover means a statutory board or a board appointed by executive order.

“He certainly does not mean a board consisting of honorary members. If he wants a local Government Board of which the members will be paid men, there will arise the question of finance and it will probably have to be before the Secretary of State. I assume that it will have to be done by statute. It is not for me to say—of course I do not profess to understand the operations of the grand machinery of the Government of India at home or here—whether it will have to be done by a Statute of Parliament or by a Statute of the Government of India or by any other means. I therefore say nothing upon it.

“There remains only the second part (b)—that Advisory Councils be formed to help the Magistrate-Collector in the discharge of his executive duties. On this point there has been a very warm and interesting debate. I have followed it with considerable attention. The arguments advanced and the statements marshalling the facts against the proposal were admirably arranged. I fully recognise the difficulties pointed out by the Hon'ble Mr. Arthur, the Hon'ble Mr. Wynch, and in a more or less degree by the Hon'ble Mr. Walsh and others who all could not see any possible advantage in the creation of advisory boards. I listened with great interest to what they said. They seem to think that the Indian world will go to ruin if these advisory boards are created and the character, position and prestige of District Officers will be reduced to a cipher, and that whether it was viewed from the point of view of the Collector, of the Government or of the people, there would be no compensatory advantage of any kind. Well, I am sorry to say that it is impossible for these Hon'ble gentlemen to expect agreement with them on the part of non-official members of this Council in the statements they made and in the attitude they have disclosed. In my humble opinion, they would have made their case much stronger if they had put forward the pros and cons of this question, and contrasted the resulting advantages with the resulting disadvantages. This question of advisory boards, Sir, is so large that if we were to go into its details we are likely to be confined and lost in our endeavour to find a

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solution. All that is now proposed is that the principle should be accepted. The nature of the functions of these boards, whether their members should be appointed by nomination or by election or both, in how many places in a district, where they are to meet, at headquarters or elsewhere—these are all matters of detail which cannot be gone into now with advantage. As regards the principle itself, it has been resisted on various grounds. For my part, I think these boards will be in the highest degree useful. I am not one of those who believe that the modern Collector is an inferior being, morally and intellectually, to his predecessor in title and office. It is true that in the good old days Collectors had more time and they were more in touch with the people; but to say that on that account they did better work, or that they were morally and intellectually better men is to lose sight of actual facts. They were very kind, very generous, as a rule; but they were very often guilty of acts of *sabardast* from which the modern Collector is free. In the interests of the Collectors themselves, advisory boards would be most useful. Now, my Hon'ble friends over there spoke of diminution in prestige and diminution in responsibility if advisory boards were granted. It is somewhat difficult to examine the nature of the demand made on behalf of prestige, because I myself do not understand what prestige means exactly. My own belief is that real prestige grows where the District Officers are more and more useful in the discharge of their duties and grow more and more popular. Diminution of responsibility there may be, but with diminution of responsibility there will be more popularity, because any odium attaching to measures which he would accept and adopt if he were left alone would now be transferred to the shoulders of the members of the advisory council. To that extent the people would not in future blame the Collector alone but would blame those also whom the Collector consulted. Therefore, with the diminution of responsibility there would be the compensating advantage of diminution of odium, diminution of unpopularity.

“Then, in regard to the next point, and this point has been pressed on various grounds. It is said that the Collector has, and will have, access to a lot of people for seeking information. In this matter, you will kindly excuse me for a little plain-speaking. I must say that for various causes intercourse between European district officers and the people of this country is becoming less and less in many places. I absolutely decline to go into the question as to whose fault it is to be attributed. I am prepared to grant it is owing to our fault for the sake of argument. But the fact is there. Now the fact being there, the next question arises whether it is desirable for the Collector to be guided by the opinions of persons who do find their way to him and speak to him in private. I have known disastrous consequences, and even to the personal misfortunes of particular individuals arising out of these informal private and secret inquiries. Such inquiries, if worth making, should be made in company. What I do claim is that the Collector would be in a far better position to understand the needs of the people if he made his inquiries in public, at least in company. I always attach great importance to inquiries made in company. I should like to place him in company where any inaccurate or biased information or opinion will be immediately corrected, where what one says will be soon public property. I should like at least three or four persons to be with him when he seeks information. From that standpoint, I respectfully submit, an advisory board constituted of some three or more members would be a distinct advantage.

“If we can form a judgment in this matter from the questions put by the Royal Commission on Decentralization, I am inclined to think that they were originally more in favour of advisory boards than not. In a question put to the Hon'ble Mr. Bradley, who was examined in Madras on behalf of the Local Government, they asked:

It is rather difficult for a new man to distinguish between people who can give good advice and people who are really wind-bags or people who advertise and push themselves or look after their own interests only?

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Mr. Bradley replied :—‘ That is the reason why I think it would be difficult to appoint an Advisory Council.’

“ I echo the suggestion implied that some of the people who now find their way to European rulers will be wind-bags, people who advertise and push themselves or look after their own interests. I do not know who suggested the question to the Royal Commission, but the question is there. And what does Mr. Bradley say? “ It is because of the character of these people that I don’t want an advisory council.”—Not because responsibility will be diminished; not because prestige will be diminished; not because the Collector will have no time to consult them. Then you have another district officer in Madras—the Hon’ble Mr. Cardew—who is now the Chief Secretary to Government of Madras. He was questioned on this subject. He says his only objection is that the Collector will have to do his work twice over if he has advisory boards to consult.

Question.—Then the danger of doing work twice may exist under both conditions? (That is whether you have an Advisory Council or not).

Answer.—Yes, but I submit that it is absolutely certain that you must do the work twice when you have to discuss it with a Council.

Question.—Would it not be better to discuss a thing twice than perhaps to dig a tank twice?

Answer.—I see the point; but at the same time I fancy that the number of cases where you would dig your tank twice would be very small.

“ That is the evidence of the Hon’ble Mr. Cardew, who is now Chief Secretary, and will presently be a Member of Government of Madras. His objection was delay and not anything like the objection raised here in the debate just now. But the most important authority that I should like to quote is the late lamented Sir Herbert Risley, Member of this Council. I will read a few passages from his evidence.

Question.—Are you in favour of the creation of (a) Advisory, (b) Administrative Councils to assist Divisional District officers?

Answer.—I think there is much to be said in favour of creating Advisory Councils to assist Divisional Commissioners. Such Council would be the natural complement of the Provincial Advisory Councils which it is proposed to constitute; they would give the leading men of a division an interest in public affairs and some insight into the practical difficulties of administration; they would render the extension of the Commissioner’s powers more acceptable to the public; and they would furnish that officer with a body of reliable and responsible advisers whose opinion would carry a considerable weight if they were carefully selected. In my opinion the divisional Advisory Councils should consist of not more than six or seven non-officials recommended by the Commissioner and appointed by the Local Government for a period of 5 years, subject to renewal. In making his recommendations the Commissioner would have regard to the desirability of representing the districts forming the division, important classes and interests, but no hard-and-fast rule as to proportionate representation could be laid down, at any rate at present. I do not think it would be desirable until further experience had been acquired of their working to give such Councils powers of administrative control, reserving to the Commissioner the right to reverse or modify their orders at discretion. At starting I should prefer to make them purely advisory in the hope that after the actual system had been in actual operation for a few years, the free working of advisory methods, unfettered by rigid rules of procedure, would indicate in what directions a further advance could be made. It might be possible for example to make it a condition in certain definite classes of cases that the Commissioner should only exercise the enlarged powers conferred on him with the concurrence of a majority of his Council, and that where the Council did not concur the Commissioner would, if he proposed to carry the matter further, be obliged to refer it for the orders of the Local Government. But, as I have said, I would begin on a purely advisory basis. If relations of mutual confidence are thereby established, as I hope and believe will be the case, the rest will follow of itself. To start with a fixed division of powers will give rise to antagonism and distrust.

“ Nothing could have been more moderately said. All that I would say, Sir, is that these Advisory Councils may at first be purely consultative bodies; and I have no objection—although I was once for having these members elected—I have no objection to these members being altogether selected on recommendations made by the Collector or District Officer to begin with. They will, in the

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beginning, be purely consultative bodies, and I cannot at all see how such a body could hamper the Collector. On the other hand, they would make, as Sir Herbert Risley puts it, the new powers conferred on him more and more acceptable to the public. I know that we do not have Divisional Commissioners throughout the country; in some places there are Divisional Commissioners, and in other places there are no Divisional Commissioners at all; therefore what he says about Divisional Commissioners must, in my opinion, certainly be applied to Collectors, where there are no Divisional Commissioners. The alarm taken by the Hon'ble official members here, Sir, simply proves the transition from the patriarchal and autocratic to the democratic age; and if their argument be pushed to the logical extreme, they would do away with the Parliament in England. I know that in the evidence given before the Royal Commission very many of them, in regard to appellate powers, were against appeals and were for having their own orders final. Therefore I respectfully submit that the alarm raised by the Hon'ble official members here simply shows their own personal and strong convictions quite *bond fide* to and at the same time indicates the transition stage from one-man rule and patriarchal government, from occasional *zabardast*, to law and system and democracy."

The Hon'ble Mr. Abbott :—"Sir, regarding Advisory Boards, from my experience of Collectors for over 30 years in the United Provinces, I think that they lose no opportunity of encouraging in every possible manner people to come forward with advice. Any one who may doubt this has only to go to the Collector's bungalow in town or in camp in the district, where he will find callers of all classes of people. It will be surprising to find what the Collector knows about the people, and they will tell you that the Collector lost no opportunity of getting all information about the people and the district. Any council as suggested might tie the hands of the Collector to the few. Besides, such a council would not be satisfactory as ably explained by the Hon'ble Mr. Arthur. I am sure I am voicing many of the non-official members here when I beg leave to dissociate ourselves from the words of the Hon'ble Mover to the effect that the district officers are not in touch with the people nor proficient in their languages.—"

The Hon'ble Mr. Surendra Nath Banerjee :—"They are not my words; they are the words of the Decentralization Commission."

The Hon'ble Mr. Abbott :—"It is expressions such as these that give the world wrong and false impressions, helping to disparage the finest service in the world. I regret I am unable to support the Resolution."

The Hon'ble Mr. Pandit :—"Sir, I do not wish at this late hour to take up the time of the Council with any long speech on this Resolution. The first item of the recommendations which are now under discussion is one with regard to presidents of district and sub-district boards; and as the Central Provinces have been referred to by more Hon'ble Members than one as being in the happy position of having the right to elect the chairman of the district board accorded to members of that body, it is necessary to point out, without admitting the correctness of the adjective applied to my province by Hon'ble Mr. Barua from the small province of Assam and other Hon'ble Members, and without entering into a comparison of the province in other respects with other provinces whether belonging to the first, second or third grade, that the system of local self-government was developed much earlier there than in any other province. Even before Lord Ripon's famous resolution of 1882 was issued, Sir John Morris, who was then the Chief Commissioner of the Central Provinces, had already generally introduced popular representation on local fund, municipal and station committees performing work which later on devolved upon the local self-governing bodies; whereas in other provinces election was in practical operation in places which could be counted on the fingers of one hand; and if these bodies have obtained that right, they have fully justified it, as will appear not only from the fact that they have on the district councils

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two-thirds of their members elected and an elected chairman, but from the verdict which was pronounced upon them in 1913 in Sir William Holderness' Report on Moral and Material Progress. It is stated there 'Only in the Central Provinces was popular representation on the local bodies generally and successfully introduced in 1874 and 1883, and that success still continues.' If the other provinces have also made similar advance and have passed through the same stages of training, I should certainly support the recommendation contained in this Resolution; but on this point I agree with the Hon'ble Mr. Vijjaraghavachariar that these questions had better be dealt with in the provincial legislatures, which will be more competent to deal with the exact requirements of their provinces in this respect.

"Sir, the second recommendation is the one round which the fiercest controversy has raged to-day. We have heard from Hon'ble Members who have spoken of the advantages that will accrue from its adoption. Hon'ble Members on the Government side, or rather official Additional Members, have also spoken expressing their opinion with regard to this proposal. The Hon'ble Mr. Arthur drew a harrowing picture of what would happen if the Resolution were accepted. We all realise that the proposition in the very wide terms in which it is couched would not be acceptable to the bulk of Hon'ble Members who are desirous of finding a practical solution of the problem. Everyone will, however, agree that there are several matters in which it is highly desirable that before the district officer takes action he should consult public opinion, and then act on the lines of the policy which has met with general approval. I was a witness before the Decentralization Commission, and in my recommendations I put forward three or four of the objects to which the functions of such advisory councils might be limited. The Hon'ble Mr. Gokhale, in pressing on this Council a resolution of a similar character two years ago, put forward a concrete proposal allowing only a limited scope to these advisory councils of the District Officer. I believe the Hon'ble the Home Member also would not be altogether against the creation of some such advisory bodies, not perhaps at this moment, but in course of time; if I have read his opinion furnished to the Decentralization Commission correctly. The Hon'ble the Home Member had been Chief Commissioner of the Central Provinces, where his experience of non-official public men was, I hope, not altogether disappointing; and where, I gather, it was so far encouraging as to enable him to recommend that in course of time it might be possible to have advisory bodies drawn from district councils. He said in his note aforesaid dated the 8th January, 1908: 'It is no doubt from the district councils that formal advisory councils for the district officer, for the Commissioner and for the Provincial Administration may be gradually built up.' Expressing with reserve, as the matter was still in correspondence with the Government of India, he wrote 'while, however, the constitution of such councils on a formal basis is a question of great difficulty, I entertain no doubt whatever of the benefits to be gained by constant and informal consultation with intelligent *representatives* of the various classes. Our officers are trained to do this. Every measure of any importance that is adopted is discussed beforehand, whether it be by summoning a few representative men or by conversation with individuals, or at informal gatherings of the people, in rural areas; and this practice must continue to increase if we are to keep pace with the times. I cannot say what prevails elsewhere in India, but in this Province a very general confidence is reposed by the people in their district officer once they have learned to know him.' The advisability of consulting representative public opinion is admitted and the step of getting a body even for the limited purpose of obtaining opinions which will be offered in a spirit of responsibility is not a big one to take. I feel sure that such a body, however limited its functions may be in this respect and however great may be the latitude allowed to the district officer to override the opinions submitted by such a body, will, if such a body is constituted, be most valuable in arriving at a proper conclusion; for then we shall not only have responsible opinion, but these very same gentlemen constituting the advisory body will be trained to look upon questions in a certain

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intelligent and responsible way and will thus be in a better position to look at, and give an opinion on, the questions referred, which will harmonise with that of the district officer, if sound. Not only that, but there will be other advantages, that of giving the people the satisfaction of knowing that some at least of their representatives are associated in matters in which there is a likelihood of there being some feeling on the part of the public against any measure which might be taken by the district officer. The Hon'ble Mr. Banerjee has, no doubt, not put forward a cut-and-dried scheme, for there must be difficulties which are necessarily inherent in such a proposal as that of advisory boards. But if Government will be prepared to take some steps in order to create some body like this, I am sure that the country will feel grateful, and that it will be a germ which will develop into a healthy plant and bear fruit that will be relished by the country as well as by Government.

"The third part of the recommendation is not one of very great importance. I am sure that in every provincial Government there is a department in charge of an officer who deals exhaustively with this branch of the work. I therefore would not go to the extent of asking that the Government should accept this Resolution in the comprehensive form in which it has been moved. I would content myself with an expression of my general support of the principle of having these advisory councils, however limited their scope may be."

The Hon'ble Mr. Porter:—"Sir, this Department is concerned only with sections (a) and (b) of the Resolution. As regards these I have only to emphasise the point mentioned by previous speakers that Mr. Dutt failed to convince the Decentralization Commission, who rejected his proposals in paragraphs 795 and 871 of their report. The general proposals of the Commission with regard to District Boards are still under consideration, and the Hon'ble Member will understand I can make no statement at present. I am unable, so far as this Department is concerned, to accept the Resolution, for the reasons which I gave in dealing with the previous Resolution."

The Hon'ble Sir Reginald Craddock:—"Sir, I wish to confine my remarks to section (b) of the Resolution moved by the Hon'ble Mr. Banerjee, and would like to point out that this is an absolutely and totally distinct subject from the other portions of his Resolution, and from the opinions given in the Council, it is quite certain that no person can give a vote on all these together, either for or against them; and if any opinion in this Council is sought ultimately by division on the Resolution a separate opinion should be obtained on section (b). I may say at the outset that the proposal for advisory councils for Collectors was opposed by me two years ago most strenuously in this Council, and I will affirm that I will oppose it on behalf of Government no less strenuously than I did before. This is not a matter on which I am prepared to express sympathy, which I do not feel; or to hold out prospects of future conversion, of which I feel no possible chance.

"But I will make it perfectly clear, I hope, to the Council that my reasons in opposing this Resolution are not due to any preference for bureaucratic ascendancy, to any dislike to the expansion of local self-government, or to any opposition to democracy. My reasons, as I shall explain them, will be that the whole scheme is impracticable, that it is radically defective, that it has no part in the present system of administration and that it cannot possibly have any part in any future system of administration under which greater powers of local self-government are given to the people of this country.

"The motion to provide Collectors with a body of recognised councillors reflects a kind of sentiment which is very prevalent in these days, in which imagination seems to turn to councils, committees, conciliation boards, *et hoc genus omnes*, as the one panacea for all the ills the flesh is heir to. Some minds seem to be captivated by the idea that nothing good or right can be done by any responsible authority until a large number of comparatively, or perhaps totally,

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irresponsible people have told him what to do and how to do it. The Hon'ble Mr. Gokhale, in his resolution of two years ago, favoured a Council of 9 members, partly elected and partly nominated, to be attached to the Collector with powers that would be merely advisory *to begin with*. If I understand the Hon'ble Mr. Banerjee aright, he merely wants a body of consultants to whom the Collector can apply for advice if he requires it, but to whom he need not apply if he does not require it. But, Sir, before we start upon steps of this kind, we must be satisfied whither they are leading. Before we are caught by the seductive glamour which enthusiastic members, like the Hon'ble Mr. Banerjee, seek to throw over this seemingly attractive and harmless proposal, we must ask ourselves how long such a set of councillors, voluntary consultants or whatever they are called, would continue to be satisfied with this humble role; how long it would be before everyone would be asking, when a Collector had done something, whether this Council of his had been consulted or not; and I can almost call up to my imagination the way in which an Hon'ble Member, like the Hon'ble Mr. Banerjee, would thunder forth his denunciations in this Council and ask whether the Collector had consulted his Council, what their advice had been, whether he had taken that advice, and if not, why not! Most surely before long we shall be face to face with these developments which Mr. Gokhale foreshadowed, *viz.*, that if the Council agreed with the Collector, he might do a thing; but if they disagreed, he must refer the matter to higher authority. Whether Mr. Banerjee contemplates that result or not, that is the sure result of his proposal. In fact, there would be no responsibility left at all with the Collector; for if he followed the advice of his Council, he would be able to say, like Adam, 'the Council advised me and accordingly I did'; whereas if he did not follow the advice of the Council, he would not be able to act himself but would have to seek the orders of his superior officers. If the Collector had a council of this kind, he must either remain its master, as in Mr. Banerjee's proposal, *i.e.*, he must have the power to consult it if he chooses, or not to consult it if he does not choose; to take its advice if he wants it, or not to take its advice if he does not want it: or he must become its servant, as in Mr. Gokhale's proposal. In the former case, the Council would be superfluous and unnecessary, because the Collector can always consult whom he pleases; in the latter, the Collector would be bound to become weak and irresponsible, and his authority would be undermined. The Collector, Sir, is not a president of a legislative assembly which discusses only principles or measures. He is from day to day faced with concrete facts with men and things, and he has to carry out a policy and apply it to the cases and circumstances before him. If he is applying this law in a judicial or *quasi-judicial* manner, he has to apply it according to the law and the evidence, and you cannot saddle him with compulsory jurymen. Remember that the only parallel for appointing consultants in coming to decisions upon concrete facts, is one in which the consultants are not the same men each time; they are collected *ad hoc*, and both parties have the right of challenge. Can you imagine that the Collector's decision in an executive matter affecting men and things ought to be subjected to the vote of a small fixed body of Councillors? Now however much the ideal, which, as I said, attracts certain minds, might seem desirable, it is absolutely useless, as Mr. Achariar has suggested, to commend an ideal unless you pursue it further and examine the practical realities of the situation. We have had able speeches and thoughtful speeches from many Hon'ble Members, official and non-official, and I feel that on this occasion I have more non-official support in my opposition to this proposal than I had in the last debate on this subject. I am glad to feel that we have made some converts. Well, when you come to deal with these practical realities, you have got to see whence the men are to be obtained with the leisure, the application, the knowledge, the independence and the reliability to advise the Collector regarding the execution of his multifarious duties? The non-official classes have to find suitable men for local boards, for municipal committees, for the Provincial Legislative Council and for the Imperial Legislative Council. Such suitable men are not usually numerous, men who can afford time for extra

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work of this kind, who can put aside their private business and devote their time to public affairs; and I am confident that at the vast majority of *mufassal* stations they would not be forthcoming at all. Again, supposing you find the men, how can they advise the Collector to any real purpose without having before them the papers of the case to study at leisure? Everyone who has experience of committees knows how hopeless it is to go into the room and give your opinion on agenda which are placed before you for the first time. The Hon'ble Members who have narrated their experiences, as district officers, have enumerated the duties of Collectors and the extraordinary difficulty there would be in his attempting to perform those duties with the aid of Councillors of the kind suggested, and I am ready to give just the same emphasis as I did before to the impossibility of carrying out duties of this kind with a body of the kind that would result—not the ideal Hon'ble Members hold out to us, but the actual body of men that you would find in those districts to carry out that ideal, of which I am convinced they would fall far short. You would have a body of advisers from among the local notables, and these local notables will acquire an importance in the eyes of the district which will cause all sorts of influences to be brought to bear upon them. As I said two years ago, so I repeat to-day, the Collectors' council will become a hot bed of intrigue. You cannot get men for the councils with no friends, no relatives, no enemies, no feuds and no factions. Once let it be thought that the Collector can be influenced in his action through his council by influences independent of the merits of the case, and the whole fabric of public confidence in his impartiality is at once undermined.

“ Well, Sir, I intended to deal at some length with one of the features of the case, *viz.*, that the Collector needs an interpreter to interpret to him the minds of the people; that he does not know what is the non-official opinion on the subject, because there is no one to tell him. I think the example given by the Hon'ble Mr. Banerjee was most extraordinarily unfortunate. He referred to the partition of Bengal. I appeal to Hon'ble Members of this Council and ask whether any addition of local notables to the Collector would have caused him to hear or see more of the feelings that agitated the Press and the Public about the partition of Bengal than he was able to do from those around him. The Hon'ble Mr. Banerjee talked about the Collector being the eyes and ears of the Administration. Well that means that the Administration wishes to get from him things that he has seen with his own eyes and heard with his own ears. They do not want him to give to them the second-hand, third-hand, fifth-hand, eighth-hand information, or whatever it may be, which he would obtain from these local bodies; they want him to report the real state of the feelings of the people.

“ Hon'ble Members in discussing this proposal have talked about what they call the non-official view. I know what is meant by the non-official view on public questions of policy which can only be appreciated by the educated classes, but the doings, the acts of the Collector, what he does, what he carries out, whom he punishes, whom he rewards, whom he helps, whom he reprimands, on these you want a different kind of non-official view to the non-official view of which you are speaking. You want the non-official view of the millions who are the people, and not the non-official view of the people who live at headquarters and who read newspapers and think they express the complete opinions of the masses. You want the real non-official opinion. Sir, although I am opposed *in toto* to this proposed development of Councils for Collectors of the kind described (and no one can attach more value than I do to our officers being in close touch with the people and obtaining the opinions of the people first hand and from the people themselves and in using those opinions to the best advantage), I say with the utmost sincerity, although I come from a Province which an Hon'ble Member has described as ‘second-rate,’ that, if I have attained to any success in my official career, it has been due to the fact that I have endeavoured at all times and at all seasons to ascertain the opinions of the men who have the most experience, whether they were politicians of extreme views at the headquarters, or not,

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down all the various grades till we came to the aborigines in the jungle. All through my career I have endeavoured to obtain the opinions of the people of all grades who understood the problems and not to depend on information repeated to me from various sources, and that is the advice which I have always given to all young officers of the Civil Service whom it was my duty to train in their work. Sir, I do not fail to attach importance to consultation with the people and to ascertaining their views. That is the whole basis of our system of administration in India, but I do not want to have these intermediary bodies of middlemen thrust as a barrier, as many district officers have described it, between the Collector and the people whose interests he is trying his best to serve. As the Hon'ble Mr. Arthur very properly remarked, the Collector's Advisory Council are the people of his district.

"Then, Sir, what I wish to point out to this Council is that this system can form no integral part of the system of administration in this country. You have certain local matters which are handed over to local self-government; you have other matters which are managed by Provincial administration, and you have other matters which are managed by the Imperial administration. As regards local matters, you create your local boards and your municipalities and you hand them over those powers which you think they are worthy to perform; and you may from time to time, as time goes on, hand to them greater powers. There is no place for a council of this kind with the Collector. He is the executive officer. Under him you may have a local body which he supervises, or again you may have a body such as a large municipal corporation with an executive officer under him whose instructions he takes. But in the carrying out of his duties, which are executive duties, no one could possibly suggest the necessity, in any system of government that we may have, of providing the executive officer with a fresh set of councillors. Take a big municipality or corporation, they may be the people who decide the general policy and who give orders, and they have under them a chief executive officer who carries out these orders and who is given various powers, but nobody would dream of providing the chief executive officer to the municipality with a fresh set of advisers or a fresh council of his own; and just so is it with the Government. Substitute for the municipal corporation, or whatever the body is, the Government. They have their executive officer and he carries out their orders and instructions, and for these duties which are entrusted to him he is the one responsible authority and he must do it. Let him consult his trusted officials, let him consult all non-officials, not only those at headquarters, but also all non-official persons wherever he may find them and where he may value their advice. Those are the lines on which I look forward to the development of local self-government. If the time comes to take away some of these powers which are retained by the Government in its own hands and hand them over to the local bodies, then the local bodies can exercise those powers; but as long as those powers are not given to the local bodies, the Local Government and its officers must exercise them with the Collector as their executive officer. There is no place whatever for the Hon'ble Member's Council. When the change is made, whenever it is made, it will come by the devolution of powers to the local bodies and not by hampering the Collector with a council of his own.

"I am sorry to detain the Council, but there is one more matter on which I should like to lay stress, as nobody has placed it before us to-day; and that is that every non-official speaker appears to have ignored the value and the importance attaching to the Indians who serve the Collector in various capacities as *tahsildars* and Deputy Collectors. No one seems to think they count for anything in interpreting to the Collector the opinion of the people around him. In my opinion, from my experience (and, after all, officers who have served in the districts are the only ones who can speak with experience on that point) in my opinion and from my experience, I say, it is a calumny to say that these officers either do not know what is going on in the district and do not know the feelings of the people, or if they

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know them, are afraid to express them, because they think the Collector will differ from them. It is, I consider, incorrect, it is unfair to them, and I repudiate in respect to our Deputy Collectors and our trusted Indian officials any sort of censure or blame of that kind. But any one who puts that plea forward cannot ignore the natural results of the argument. If Deputy Collectors and if these officials cannot be trusted to represent the views of the people among whom they serve to their superior officers, because they think they may offend them and not get their promotion; then what becomes of the general demand for entrusting higher powers to these same officers and for asking for them to be employed in greater numbers.

"I do not accept the imputation that is sometimes alleged to attach to our worthy hard working and honourable men who are Deputy Collectors and *tahsildars*. I do not accept that; but if you seek to say that these men are of no value, then I say it is not correct. But if it were correct, the only corollary is that these men are not fitted for the higher appointments which Indian non-official educated opinion is always asking for them.

"Therefore, Sir, on behalf of Government I cannot accept this Resolution. I say that there are not the men, and if there were the men, there is not the business for them to transact; and if there were the men, and if there were the business for them, why then you cannot entrust it to them because the whole work of the Collector will come to a stand still while men were discussing and debating what should be done until the time for doing it had gone by. If these Councils were to be given, the Collector himself would become the figure-head of an organization of men and not an executive officer; he would cease to fulfil the functions for which his appointment was created. If Collectors are overburdened, if their office work keeps them away from the people, relief is to be obtained not by a further engrossing of their time by associating them with Councils, where their time will be taken up in trying to convince their Councils or in being convinced by their Councils, but in reducing the area of their charge to manageable limits; and then, as time goes on, with future developments, to delegate greater powers, and further powers to the local bodies for which they may have shown themselves worthy."

The Hon'ble Mr. Surendra Nath Banerjee:—"Sir, I must confess to a sense of surprise at the warmth of the reply which has been given to my observations by the Hon'ble the Home Member. His usual manner is one of calmness and moderation and I confess to a sense of disappointment at his attitude and the warmth of that attitude in regard to this Resolution. I will say also this that I have followed his observations with the keenest possible interest and before I came to this room I read with close attention the Hon'ble Member's speech in reply to the Hon'ble Mr. Gokhale's motion. I do not find any new matter brought up to-day, but the old arguments set forth with a warmth of feeling which he did not display on that occasion.

"Sir, the Hon'ble the Home Member is pleased to suggest—I hope I have correctly interpreted him—that this is the thin end of the wedge, that I want this Advisory Committee to be appointed as a mere consultative body, that the Collector will be at liberty to brush aside the recommendations of this body, but that when Collectors have done that, somebody occupying my seat in this Council will come forward and thunder forth his anathemas against the proceedings of the Collector. I have had not the smallest idea of anything of the kind. 'Sufficient unto the day is the evil thereof' is the dictum of the practical administrator, and I hope and trust that my Hon'ble friend the Home Member will accept it. We cannot afford as administrators to take long views of things; we have sufficient work for the day and we do that. Will the Hon'ble gentleman tell us what will be the future of this Council, whether it will remain a consultative body or whether it will be something more—whether in the course of succeeding developments it will not become the irresistible and the unresisted master of the Government? As you ask me to take a long view of things, I am prepared to accept the challenge and await the

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result. The Parliament of England was at first a small consultative body summoned by Simon de Montfort, and it is the institution that governs the British Empire to-day. We are not at liberty, sitting here as practical administrators, to look far into the future. We discuss questions on their merits without reference to future developments that may take place. I venture to submit that ought to be the attitude of every practical and sound administrator sitting here and presiding over the destinies of a great department dealing with the affairs of an Empire like this.

"Sir, it has been said that the Collector ought to be at liberty to consult whomsoever he pleases. He does that now. Why should you then fetter him with a Council, is an argument which the Hon'ble the Home Member has brought forward. The Collector is certainly at liberty to consult whomsoever he pleases. Even if he had a Council, that liberty would not be taken away from him. But if there is a constituted Council, there is the guarantee that the Council will advise with a sense of responsibility; but when you go to A, B and C, to this wind-bag and to that wind-bag, to this man trying to advance his own interests, and to that man trying to advance the interests of his relatives, where is the guarantee that the advice will be sound and disinterested? Therefore, when we suggest an Advisory Council, we suggest a responsible body who will neither be wind-bags, nor interested persons. Thus, there is a distinct advantage in having a Council of this kind advising with a sense of responsibility.

"Then, Sir, it has been said that the responsibility of the Collector will be taken away from him if there is such a council. I fail to understand how that will be so. It is an advisory body; the Collector will be the master of the situation. The Hon'ble the Home Member has himself acknowledged that. I do not want to make this Advisory Committee the master of the Collector but rather, if I may so express myself, a servant of the Collector. If my servant gives me any advice about any particular matter and I disdain that advice, does my sense of responsibility depart, or is it even in the smallest degree restricted? I accept the figure of speech which the Home Member has made use of, in interpreting the sense of my resolution and accepting that view, I ask that if the Collector dispenses with their advice, refuses to be guided by it, how is his sense of responsibility lessened in the smallest degree? I am surprised, Sir, that in this Imperial Legislative Council an argument of this kind should have been brought forward and by the Home Member. I must say, Sir, that I am thoroughly unconvinced by the arguments of the Hon'ble the Home Member, the country will remain unconvinced; every educated Indian will read those arguments and he will confess to a sense of regret that an argument of this kind should have been brought forward by an Imperial Minister for the purpose of defeating a motion which is calculated to strengthen the administration, to add to the elements of sobriety in our public life, to stimulate public spirit in the country, and to strengthen the Collector in the discharge of his executive functions. I confess to a sense of great disappointment, but I feel bound to give expression to it in the most emphatic manner possible. The Hon'ble the Home Member says that he has got converts to his views this time whom he had not before. I rejoice at the announcement, I desire to congratulate him on the converts he has secured. I do not know who they are, but if he has got them, so much the better; the country will not indeed miss them.

"Sir, with reference to the first part of my Resolution, I propose to withdraw it after the assurance that has been given by the Hon'ble Mr. Porter. With regard to the third part I may just mention this fact that this proposal was made in Lord Ripon's time. My memory carries me back to those days, and Lord Ripon suggested a Board consisting of three members, the Sanitary Commissioner was to have been one of them, an Indian gentleman was to be the second, and there was to be a third member. That proposal fell through owing to financial reasons. I have been trying to find out the papers, but I have not succeeded. I made an application to the Government of Bengal, and the Government of Bengal was not able to give me the papers. The papers

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may be in the Secretariat of the Government of India. I am distinctly of opinion that with the development of local self-government that is now taking place you must relieve the local officers of the power of control and you must confide it in a public body furnished with expert knowledge and devoted exclusively to local concerns. Sir, this motion will, I fear, not be accepted by the Government of the day, but I have not the slightest doubt, if I have the smallest prevision into the future, that the time will come when a Local Government Board will be established in every province.

"Sir, the first part of the Resolution is withdrawn, and I ask you, Sir, to put the other parts of the Resolution separately, if I may be permitted to make that request."

The Hon'ble the Vice-President :—"Part (a) is, by permission, withdrawn. Parts (b) and (c) will be put separately."

Parts (b) and (c) were put and rejected.

RESOLUTION *RE* AMENDMENT OF TRANSFER OF PROPERTY ACT.

The Hon'ble Rai Sita Nath Ray Bahadur :—"Sir, I rise to move the Resolution which stands in my name :—

That this Council recommends to the Governor General in Council that the opinions of Local Governments be invited as to the desirability of amending the last paragraph of section 59 of the Transfer of Property Act in the following manner, that is to say, to add in the first line after the words 'this section' the following words 'or in section 48 of the Registration Act (III of 1877)' and in the last line after the words 'security thereon' to add the following words 'and such mortgages shall have the same effect as regards priority as if they were registered.'

"The reasons which have induced me to move this resolution are the conflicting decisions which have been given by the Calcutta High Court. It has been the invariable practice in this country since the decision of the Privy Council in the case of Varden Seth Sam *versus* Luckputty (9 Moore L. A.)—that was a case from the Madras Presidency—to recognise equitable mortgages without question. But the decisions which have recently been given at complete variance with the former decisions render it necessary to amend section 59 of the Transfer of Property Act. Sir, I beg to point out to this Council that ever since the enactment of this section 59 it has been the practice for banks and private capitalists and other money-lenders to lend large sums of money on equitable mortgages: and it is a great facility to traders to take money on the deposit of title-deeds, because the execution of regular mortgage not only involves a large expenditure of money, time and labour, but sometimes, when it is exposed, goes to impair the credit of a merchant. Under these circumstances merchants as a rule, when on a sudden they are called upon to raise money, whether it be to meet *hundis* or to enable them to conduct their business more satisfactorily, usually resort to the practice of raising money on the deposit of title-deeds. For a long time—as I pointed out, ever since the decision of the Lords in that appeal case from the Madras Presidency, and more particularly, since the enactment of the Transfer of Property Act, it has been the practice of banks and private capitalists and money-lenders to advance large sums of money on the basis of what is called an equitable mortgage, and which is created by the mere deposit of title-deeds with the lender and the validity of such mortgages has never been questioned, rather it was held in the case of Coggan *versus* Pogose, which was a decision of Mr. Justice Pigot of the Calcutta High Court, that an equitable mortgage should have priority over a subsequent registered document relating to the same property. But, in view of the provisions contained in section 48 of the Registration Act, a question has recently arisen as to whether a subsequent registered mortgage

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should not have priority over an equitable mortgage. If that view be accepted, *i.e.*, that a subsequent registered mortgage should have priority over an equitable mortgage, there will be no necessity for the provision contained in the last paragraph of section 59, because it will lead to loss of money, if not to fraud.

“ Now, section 59 of the Transfer of Property Act says :

When the principal money secured is one hundred or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested to by at least two witnesses.

“ But immediately after that it is enacted :

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

“ In contradistinction to what is stated in the first part of section 58, which enacts that a mortgage can be effected only by a registered instrument signed by the mortgagor and attested to by two witnesses, it is enacted in the last portion of the same section that nothing contained in this section shall invalidate mortgages made in the towns of Calcutta, etc., by the mere deposit of title-deeds of immoveable property ; and this, as I said before, is intended to give facilities for carrying on business.

“ I may read a short extract from the judgment of their Lordships of the Privy Council in Varden Seth Sam's case—

“ There is properly speaking no prescribed general law to which the decisions must conform. They are directed in the Madras Presidency to proceed according to justice, equity and good conscience. The question then is whether the decision appealed against violates that direction or not. The Court of Appeal reversing the prior decisions has decided that the contract was not operative as a hypothecation, or pledge, even between the parties to it. Yet the evidence shows that the plaintiff looked not simply to the personal credit of the person with whom he contracted, but bargained for a security on land. If any positive law had forbidden effect to be given to the actual agreement of the parties to create that lien, the Court of course must have obeyed that law. If the contract of lien were imperfect for want of some necessary condition, effect must have been in like manner denied to it as a perfected lien. But nothing of this sort is suggested in the pleadings or proved. It is not shown that in fact the parties contracted with reference to any particular law. They were not of the same race and creed. By the Mahomedan law, such a contract as the one under consideration, for a security in respect of a contingent loss, would be one, not of pawn, but of trust. It is not declared that any writing or actual delivery is essential to the creation of such trust by that law ; but as the contracting parties are not both Mahomedans, that law would not have governed the question of the validity and force of their contract, even in the Supreme Court. The plaintiff is a Christian ; the contract took place with parties living within the local limits of the Supreme Court of Madras, though it related to land beyond them. It is not shown that any local law, any *lex loci rei sitae* exists, forbidding the creation of a lien by the contract and deposit of deeds which existed in this case ; and by the general law of the place, where the contract was made, that is, the English law, the deposit of title-deeds as a security would create a lien on lands, though, as between parties who can convey by deed only, or conveyance in writing, such lien would necessarily be equitable. In this case there is an express contract for a security on the lands, to which no law invalidating it, effect must be given between the parties themselves.

“ Then it was held in a case decided by Mr. Justice Pigot (*Coggan versus Pogose*), that an equitable mortgage created by deposit of title-deeds would have priority over a subsequent mortgage though registered. Then in another case reported in I. L. R. 33 Cal. 110, decided by Sir Francis Maclean, O. J., and Caspersz J., their Lordships say—

We now pass to the appeal of the plaintiffs (that is, Rai Gokul Das) which deals with the question of priority as between the Company and themselves. The Company say they claim under a registered mortgage, and that they had no notice of the plaintiffs' equitable sub-mortgage, and that they are entitled to priority. The plaintiffs contend that, inasmuch as they are prior in point of time, whether or not the Company had notice of the sub-mortgage, they are entitled to priority, and they put their case in this way. They say that, having regard to the last paragraph of section 59 of the Transfer of Property Act, the transaction with Dhanpat Singh, that is, the mortgagor here, constituted perfectly valid

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mortgage to them, inasmuch as it was a delivery to the creditor's agent of the three mortgages, which constituted the only documents of title of the property in question and that this was done with intent to create a security thereon. A mortgage is defined in section 58 of the Transfer of Property Act. No registration then was required under section 50.

"Then later on their Lordships say—

Now, it was decided more than 20 years ago by Mr. Justice Pigot in the case of *Coggan versus Pogose* that a deposit of title-deeds of certain property under a verbal arrangement to secure payment of a debt, is not an oral agreement or declaration relating to such property within the meaning of section 48 of the Registration Act. Section 48 says that all non-testamentary documents duly registered under this Act and relating to any property whether moveable or immoveable shall take effect against any oral agreement or declaration relating to such property unless where the agreement or declaration has been accompanied or followed by delivery of possession.

"The defendants here, that is the Eastern Mortgage Company, wanted to take shelter under section 48 of the Registration Act; but I beg to point out that the Registration Act, *i.e.*, Act III, came into force in 1877, whereas the Transfer of Property Act was passed in 1882. With their eyes open the Legislature expressly enacted that in spite of what is stated in the first part of section 59, nothing said in this section would go to invalidate a mortgage created by deposit of title-deeds. So under this section it was held that this disposed of the contention raised under section 48 of the Registration Act. Then it is said, 'The case is the stronger since the passing of the Transfer of Property Act', which goes to show that irrespective of the passing of the Transfer of Property Act, according to the previous judgments of the Privy Council and the judgment of the Calcutta High Court, in India it has become a wide practice to recognise mortgages created by deposit of title-deeds, and their Lordships pointed out that the case has become stronger since the passing of section 59 of the Transfer of Property Act.

The case is stronger since the passing of the Transfer of Property Act, for section 59 recognises such a transaction as a valid mortgage, without the necessity of registration, while section 58 tells us what a mortgage is and section 67 what are the rights of the mortgagee. We therefore think that apart from the question of notice, the Company is not entitled to priority over the plaintiff, as the former are not protected by section 48 of the Registration Act.

"Then it was distinctly held that in spite of the provisions of section 48 of the Registration Act a mortgage created by deposit of title-deeds should have priority over a subsequently created mortgage, subsequent in point of time. But unfortunately doubts have been thrown on the correctness of those judgments by the strong views expressed by His Lordship, Sir Lawrence Jenkins, O. J., and by the decision of Mr. Justice Fletcher in the case of the Calcutta Bank *versus* Panchcowry Mitter. In that case the question arose in the Calcutta High Court whether a registered mortgage should have priority over a mortgage by deposit of title-deeds, known as an equitable mortgage of the same property. Under section 59 of the Transfer of Property Act the latter is a perfectly valid mortgage, but it was argued that an equitable mortgage is the result of an oral agreement, and therefore under section 48 of the Registration Act a registered mortgage, though subsequent in point of time, should take effect against, *i.e.*, would have priority over, an equitable mortgage relating to the same property.

"The case was compromised and therefore the point was not finally settled, but the Hon'ble the Chief Justice, Sir Lawrence Jenkins, seemed to be of the opinion that the registered mortgage would have priority; and the decision of the Hon'ble Mr. Justice Fletcher in the lower court was to the same effect. It is indeed a matter of regret that Sir Lawrence Jenkins should hold such a view. I may mention here that this very point was raised and fully discussed in the case of *Gokuldas versus Eastern Mortgage and Agency Company* (Indian Law Reports, 33 Cal., page 410), and it was held in the above case by an Appellate Bench consisting of O. J. Sir Francis Maclean and Mr. Justice Caspersz that an equitable mortgage is not an oral

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agreement. It is a complete mortgage by itself and as such a subsequent registered mortgage could not under section 48 of the Registration Act have priority over an equitable mortgage.

"However, as stated before, large sums of money have been advanced and are being daily advanced in the presidency towns on the bare deposit of title-deeds relating to immovable property, on the faith of the provisions contained in section 59 of the Transfer of Property Act, that it is a perfectly valid and good security to advance money on the deposit of title-deeds. It will entail serious loss, it will involve sacrifice of large sums of money, to hold now a contrary view, that is to say, to hold that, in view of the provision contained in section 48 of the Registration Act, a subsequent registered mortgage should have priority over an equitable mortgage relating to the same property. As a very important principle is involved and as section 59 of the Transfer of Property Act was enacted with a view to give facilities to merchants and traders for securing money for financing their business without executing a regular mortgage, which necessarily entails large expenditure of money, time and labour and which when exposed goes to impair a trader's credit, and doubts having been cast on the absolute validity of equitable mortgages on account of the strong opinion expressed by the Hon'ble the Chief Justice of the Bengal High Court, it has become imperatively necessary from all points of view, specially in the interests of trade and commerce, to place equitable mortgages on a sound and sure footing. Otherwise it would open a wide door to fraud as the following illustration will show.

"Suppose B were to borrow from A in Calcutta the sum of Rs. 50,000 and were to deposit with A the title-deeds of his, that is, B's immovable property in the district of Dacca, with a view to create a charge thereon; and suppose after the lapse of 6 months or so, B were to sell his above property to C for a lakh of rupees by a registered conveyance, now, if it were held, as it has been held in the Calcutta High Court, that the registered conveyance, though subsequent in point of time, would have priority over the equitable mortgage which is in the nature of an oral agreement and nothing more, would not such an interpretation of the law open a wide door to fraud and be a stimulus to the commitment of fraud?

"The principle of equitable mortgage has long since been recognised both in England and America. In this country equitable mortgages have been accepted without question since the decision of Their Lordships of the Privy Council in *Varden Seth Sam versus Luckpathy* (9 M. I. A. 807—824) and by the enactment of section 59 of the Transfer of Property Act, the Indian Law on the subject has been assimilated to what prevails in other important centres of trade and commerce. It is well known that it takes a very long time to execute a regular mortgage and it involves a large expenditure of money and what is worse the execution of a regular mortgage goes to impair a man's credit. It was to avoid all these, and at the same time to provide prompt and inexpensive means for raising money required for financing business, that the provision of the last paragraph of section 59 of the Transfer of Property Act was deliberately embodied in the Indian Statute Law. I have no hesitation in saying that the provision of the last portion of section 59 of the Transfer of Property Act has been a great help to merchants and traders for raising money for conducting their business; whatever interpretation may now be put on this section, it is an unquestioned fact that the evident intention of the Legislature was that a valid mortgage should be created by deposit of title-deeds with the creditor. To me the section seems to be clear enough, for though the first portion of section 59 provides that where the principal money secured is Rs. 100 or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses, it is, in direct variance with the above provision, enacted in the last portion of section 59, that in case of what is called an equitable mortgage, no registration or attestation would be necessary and that no written document would be required at all, but that a perfectly valid mortgage would be created by delivery to a creditor of documents

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of title to immoveable property with intent to create a security thereon; and, to prevent fraud, it was further enacted that such a mortgage could only be created in the towns of Calcutta, Madras, Bombay, etc. I have no hesitation in saying that the Legislature, by enacting this provision, deliberately intended that equitable mortgages, in spite of the provision of section 48 of the Registration Act, should have priority over all subsequently registered documents. To hold otherwise would not only go to neutralise the provision of the last paragraph of section 59 of the Transfer of Property Act, would not only entail sacrifice of large sums of money hitherto advanced by various banks and private capitalists and moneylenders on the faith of this section, would not only go to seriously handicap all businesses and enterprises, but would at the same time open a wide door to fraud; and I beg to add that the good intention of the Legislature would be frustrated and the provision made here would become an absolute nullity, for no one would care to advance money on an equitable mortgage when it is liable to be defeated by a registered document subsequently executed.

"Sir, my prayer is that the opinions of Local Governments and High Courts be invited to the conflicting decisions passed by the Calcutta High Court and in view of the current of decisions passed, it is desirable, in order to remove doubts and anxieties, that section 59 should be modified. If this Council does not accept my recommendation, I would request, as a last alternative, that the Legislature be advised to delete this provision altogether.

"I wish also to point out that the feelings of uncertainty and uneasiness are not mine alone, but are shared by the European banks and solicitors in Calcutta; and I will read extracts from their letter.

Before concluding I may state that the decision of the Hon'ble Mr. Justice Fletcher in the case of Calcutta Bank, Limited, *versus* Panchcowry Mitter and the strong views expressed by the Hon'ble the Chief Justice Sir Lawrence Jenkins, when the matter came in appeal before the Appellate Bench, have thrown considerable doubts on the absolute validity of equitable mortgages, and it is said that the present uncertain state of law on the subject is seriously affecting the business of banks. The following extracts from a case prepared by a well-known and respectable firm of solicitors—all Europeans—for having counsel's opinion on the subject, will go to verify what I have stated. The case was prepared by Messrs Morgan and Co., who are solicitors for a very large number of European banks in Calcutta, in order to seek the opinion of counsel as to what the banks should do in view of the opinion expressed by the Chief Justice.

Counsel will recollect that on the recent hearing of the appeal in the case of The Bank of Calcutta, Limited, against Nanda Lal Roy and others, in which counsel appeared on behalf of the Bank of Calcutta, Limited, a number of questions were raised upon the question of the validity of securities created or purported to be created by the deposit of title-deeds with or without accompanying registered or unregistered memoranda and also as to the relative priority of securities created by deposit with or without memoranda against subsequent securities constituted by registered instruments. The judgment of the Lower Court (Fletcher J.) on the question of priority as well as his observation on the decision in *Coggan versus Pogose* at the time of the hearing on the matter before him as well as some observations that fell from the Chief Justice when the appeal was being argued have given rise to some doubt as to the present state of law on the subject. Owing to a compromise being arrived at in the appeal, no definite decision was given on any of the points at issue.

The present uncertain state of law upon the question of the securities is seriously affecting the Bank's business, and they desire to be advised as to how far they can safely accept the security of deposits of title-deeds and as to what, if any, formal records of the deposits should be made.

"This will go to shew that the feeling of doubts and suspicions as well as uneasiness which have been created by the above decision of the Calcutta High Court are shared by well known European solicitors and European banks in Calcutta.

"I therefore, with all the earnestness that I can command, appeal to this Council to remove the doubts and suspicions which have been caused and to place the question of equitable mortgage on a sound and sure footing and thereby put a stop to the loophole for committing fraud.

"With these remarks I appeal to the Council either to amend this section and to take the opinion of the local Governments, or to delete the section altogether, so that there might not be any loophole for committing fraud."

[19TH MARCH, 1914.]

[*Sir William Vincent.*]

The Hon'ble Sir William Vincent:—" Sir, with the permission of the Hon'ble the Law Member, I should like to speak on some points which arise for consideration out of this Resolution. I shall try to do so as briefly as possible. The Resolution, as I understand the Hon'ble Mover, aims at securing to mortgages effected by the deposit of title-deeds priority over registered mortgages executed on dates subsequent to such deposit.

" Now, the position of the law is that outside the Presidency towns and certain other commercial centres which are referred to in section 59 of the Transfer of Property Act, mortgages of immoveable property, when the principal secured by the mortgage exceeds Rs. 100, can in accordance with the provisions of the Transfer of Property Act only be effected by registered instruments attested in a particular manner. Within the towns above referred to, such mortgages may be effected either by registered deed or by delivery to the creditor of the title-deeds relating to the property with the intention of creating security thereon; and section 59 of the Transfer of Property Act provides specifically that nothing in that section is to affect the validity of these equitable mortgages in the towns to which I have referred.

" The Hon'ble Mover is, however, apprehensive that the position of equitable mortgages is not sufficiently secured by these provisions of the law, and he proposes to amend section 59 of the Transfer of Property Act in two ways. Firstly, he proposes to insert in the last paragraph of that section a reference to the Registration Act; and if his amendment were to be accepted, the section would run as follows :—

Nothing in this section or in section 48 of the Registration Act (III of 1877) shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab by delivery to a creditor or his agent of documents of title to immoveable property with intent to create a security thereon.

" Now, when the Member refers to Act III of 1877, he is under some misapprehension as that Act was repealed in 1908 by the Registration Act of that year.

" The Act of 1908, however, re-enacts section 48 of the Act of 1877, and it is with reference to the later Act that he would doubtless wish his proposal considered. The section, however, does not deal with the validity of mortgages, but with the postponement of one kind of mortgage to another. In other words, there is nothing in section 48 of the Registration Act which deals with the question of the validity of mortgages by deposit of title-deeds, and it seems unnecessary to say, therefore, that nothing in section 48 of that Act should affect the validity of such a mortgage; and I suggest for the consideration of the Hon'ble Member that his proposal in this respect will not meet the object he has in view. I need scarcely explain that the question whether one mortgage is to be postponed to another is a separate question from the validity of a mortgage, and, indeed, until a mortgage is determined to be valid, no question of postponement or priority can arise. I think therefore that the Council should hesitate before accepting this part of the Resolution.

" The second amendment proposed is that the words ' And such mortgage shall have the same effect as regards priority as if it has been registered ', should be added to section 59 of the Transfer of Property Act. Now, Sir, it may be doubtful whether an amendment of this kind could be more suitably inserted in the Transfer of Property Act or whether it would not be more convenient to provide for what the Hon'ble Member wants by an amendment of the Registration Act. This is a point, however, that can be considered later if the proposal to modify the law is approved. Coming, however, to the real modifications of the law which the Hon'ble Mover wishes to effect, I doubt, in the first place, if it has as yet been proved that any such amendment is necessary or whether the amendment which he proposes will meet the case to which he refers.

" The exact position of mortgages by deposit of title-deeds in relation to subsequent registered mortgages has been before the Courts more than once, and

[*Sir William Vincent ; Rai Sita Nath Ray Bahadur.*] [19TH MARCH, 1914.]

the effect of section 48 of the Registration Act in respect of such mortgages has been specifically considered. One of the best known cases is that decided in 1884, referred to by the Hon'ble Rai Sita Nath Ray, in which it was decided that section 48 of the Registration Act—the very section to which the Hon'ble Rai Sita Nath Ray refers—did not affect mortgages by deposit of title-deeds; and in another case in 1905 the same view was taken. I have not been able to find any reported case in which a contrary view of the law has been expressed. We have, therefore, decisions for the last 30 years which secure the rights of equitable mortgagees.

“The Hon'ble Mover informs us that the priority of such mortgages has recently been doubted in the Calcutta High Court, and he has been kind enough to lend me a copy of the paper-book of the case referred to. This was, in fact, a case originally decided by Mr. Justice Harington, and the exact question now under discussion does not seem to have been raised at the first hearing at all. The position there was something as follows: an equitable mortgage had been created by the deposit of title-deeds, and subsequently the borrower entered, as it was alleged, into further contracts with his creditor and addressed to him letters stating that the deeds already deposited would remain as security for certain sums named therein; and the question at issue was whether the letters relating to the subsequent agreements should be registered or not, as it was argued that they were the real basis of the contracts in respect of the alleged subsequent adjustments, and that these contracts had not been effected by the original deposit of the deeds. The judgment has no reference to section 48 of the Registration Act, and I cannot ascertain that the question of the priority of mortgages was discussed at all before Mr. Justice Harington. In fact, the only point that was considered was that to which I have referred, namely, whether the letters written by the mortgagor to the mortgagee should have been registered or not. If I may put it so, the fact there considered was not whether an equitable mortgage by deposit of title-deeds should be postponed to a subsequent registered mortgage, but whether for particular advances there was any admissible evidence of equitable mortgage. This case on appeal was remanded to the Court of first instance with certain directions. Mr. Justice Fletcher then, as I understand his judgment, held that the debt for which priority was claimed by virtue of the equitable mortgage was a new debt created after the purpose of his original deposit of title-deeds was satisfied, and that there was a new agreement which gave the charge for this new debt on the documents already deposited. If, therefore, the modification in the law proposed by the Hon'ble Rai Sita Nath Ray were given effect to, it is at least doubtful how far the mortgagee in the suit referred to would have been benefited, for the real contention in that case before Mr. Justice Fletcher was that the charge for which priority was claimed was not created by the deposit but by a later agreement.”

The Hon'ble Rai Sita Nath Ray Bahadur:—“Sir, I rise to a point of order. I beg to correct you (Sir William Vincent) in this way, that the letter refers to a subsequent advance, not to the original advance. There were two advances; the letter referred to the subsequent advance; and the question was distinctly raised before Mr. Justice Fletcher whether the first advance under section 59 should have validity over the subsequently created registered mortgage. That was the point raised before Mr. Justice Fletcher and his decision was that it should not have priority over the mortgage under section 48 of the Act.”

The Hon'ble Sir William Vincent:—“As far as I was able to understand the judgment (I saw it only for a short time), I understand that the decision in that case was what I have stated, namely, that the charge for which priority was claimed was not created by the deposit, and there is no indication in the judgment that the learned Judge intended to dissent from the previous rulings of 1884 and 1905 to which I have referred.

[19TH MARCH, 1914.] [Sir William Vincent ; Rai Sita Nath Ray Bahadur.]

“ Those Hon'ble Members who are familiar with the ways of Courts will know that a single Judge could not have openly dissented from well established rulings in this way without some reference to them. I agree, however, that with regard to the validity of the particular agreement under examination in that case some doubt may have been created in the law by this recent decision, but I submit it is premature to consider the question of amending the law on the *obiter dicta* of Mr. Justice Fletcher, which are not reported as far as I am aware, or on certain statements alleged to have been made by the Chief Justice of Bengal (of which we have no authentic record) in a case which finally was compromised. I put it to this Council that on vague allegations of this kind, that the Chief Justice said this and the Chief Justice said that, it is premature for this Council to consider a question of amendment. I do agree, however, that there may be some doubt as to the particular point raised in this case, and I understand that, if the necessity should arise after the actual facts have been ascertained, the Government will consider the advisability of addressing Local Governments on the subject. I doubt, however, how far these difficulties will be solved in any way by the amendment which the Hon'ble Member proposes.

“ I may add, however, that if the question of equitable mortgages is to be re-opened, I think it is at least possible that some of the opinions received will not advocate that any greater protection should be secured to equitable mortgages for the expediency of allowing such protection has at various times been questioned on the ground that it infringes on the principle underlying registration; and indeed such a practice is open to obvious objection. If a lender proposes to lend money on the security of immoveable property in this country, the first and main source of information as to any existing encumbrances on the property is the Registration Office, and if no encumbrances are registered, the lender feels safe in advancing money; and in many cases he does not require that the original title-deeds of the mortgagor should be produced or made over to him. A system, therefore, by which a mortgagee who has taken every reasonable care by having searches made in the Registration Office to ascertain that the property on the security of which he is advancing money is not encumbered is prejudiced by the subsequent ascertainment of an existing mortgage effected by deposit of title-deeds prior to the registered mortgage is open to considerable criticism; the more so, because such a mortgage if effected in a Presidency town may, according to some authorities, affect property outside that area. It is at least possible (I do not put it higher than that) therefore that if the Hon'ble Member were successful in his Resolution he would find that some of the opinions received would not advocate any changes in the law, which might further benefit mortgagees by deposit of deeds.

“ In any case, for the reasons that I have already attempted to explain, I doubt whether the amendments proposed are suitable or whether they would effect what the Hon'ble Mover wishes; and I submit that it is entirely premature to ask us to consult Local Governments on a matter of this kind. I submit therefore that the Resolution in its present form is not one which should be accepted by this Council, although the question whether any amendment in the law to meet that particular case is necessary is a matter which may have to be further considered.”

The Hon'ble Rai Sita Nath Ray Bahadur:—“ I wish to read a further extract with your permission. Sir William Vincent has been good enough to doubt whether Mr. Justice Fletcher gave such a decision, I say he did so. I have no certified copy of the judgment with me, but it will be evident from the note which has been furnished to me by a counsel, namely, Mr. S. R. Das, who is a prominent member of the Calcutta Bar, and other papers, that such a decision was given:”

[*Sir William Vincent; Rai Sita Nath Ray Bahadur; The Vice-President; Pandit Madan Mohan Malaviya.*] [19TH MARCH, 1914.]

The Hon'ble Sir William Vincent:—"May I put it to the Hon'ble Member that it would be better if he read Mr. Justice Fletcher's judgment and not the opinion of counsel."

The Hon'ble the Vice-President:—"The point is one which we can decide by the sense of the Council. I take it that there is no need to accept the *obiter dicta* of the Court."

The Hon'ble Rai Sita Nath Ray Bahadur:—"In the judgment given by Mr. Justice Fletcher he expressly held that a subsequent registered mortgage under section 48 of the Registration Act should have priority over an equitable mortgage."

The Hon'ble the Vice-President:—"The Hon'ble Member would be in order in reading the judgment, but he would not be in order in reading the opinion of the counsel on the judgment."

The Hon'ble Pandit Madan Mohan Malaviya:—"May I rise, Sir, to invite your attention to Rule 3 of the Rules for the Conduct of Business of this Council, which provides that the Council shall ordinarily meet at 11 A. M. and not prolong its sitting after 4 P. M., unless the President otherwise directs."

"I will just say one word. The matter raised by this Resolution is one of importance so far as commercial men are concerned, and perhaps other members would like to say something before the resolution is put to the vote. In view of that, you may be pleased to consider whether the Council should not adjourn."

The Hon'ble the Vice-President:—"No Member has shown any desire to speak, and the Hon'ble Member is now replying, so that I think we had better hear him before we adjourn."

The Hon'ble Rai Sita Nath Ray Bahadur:—"Sir, I bow to your decision and I will read the judgment."

This cause coming on the 25th day of July instant and on this day for further directions pursuant to the directions given by the Appeal Court on the 11th day of July, 1910, on the report of the second Assistant Registrar of this Court, dated the 4th day of June, 1908, and his further report dated the 18th day of May, 1909; both filed on the 20th day of June, 1909, before the Hon'ble Ernest Edward Fletcher, one of the Judges of this Court, in the presence of Counsel for the claimants—

The Hon'ble the Vice-President:—"That is not a judgment; that is a decree."

The Hon'ble Rai Sita Nath Ray Bahadur:—"That is the judgment. I have also got the decree with me. I am not myself a lawyer. I come to seek the help of this Council. Objections have been taken that the amendments have not been properly framed. I am sorry, but that is not the point, I say. Feelings of uneasiness and uncertainty have been aroused by a recent decision, which goes to reverse previous decisions on this point. That is the question. Would it be desirable in the interests of the mercantile community that, until several lakhs of rupees have been sacrificed by an adverse decision on the point, it would not be proper for the Council to take any action on it? I beg to differ upon that point. However, I will read the judgment."

If the agreement is oral it would be postponed to a registered document by section 48 of the Registration Act if in writing under section 49

[19TH MARCH, 1914.] [*Rai Sita Nath Ray Bahadur ; The Vice-President ;
Sir Ali Imam.*]

On this aspect of the case it appears to me impossible to determine the respective priorities of the two charges. But, as above indicated by me, I should hold that in so far as the properties comprised in the registered charge to the Bank and the documents deposited with the Roys are common to both, the Bank by virtue of the registration of their charge obtained priority over the Roys. The cases cited during the argument have little bearing on the point in question, for I think that the evidence shows that on the 3rd September, 1901, a new debt for Rs. 22,000 was created, and that there was an agreement that the title-deeds deposited on the 14th August, 1894, should continue as a security for the repayment of the said sum and interest thereon. In the circumstances of this case that agreement not being effected by a registered document is postponed to a charge created by registered document affecting the same property.

The costs of the hearing before me will be dealt with by the Appellate Court.

"The judgment distinctly provides that, so far as the same property is covered by both the equitable mortgage and the subsequent registered mortgage, the subsequent mortgage would have priority over the equitable mortgage. This is the case decided by Mr. Justice Fletcher. I therefore beg to suggest, whether the amendments have been properly framed or not, that before serious loss is caused to the mercantile community by holding that a subsequent registered mortgage should have priority over an equitable mortgage, and in view of the uncertainty and feelings of uneasiness which have been created by this decision, it is extremely desirable. I do not mean to say that the legislature should at once take up the matter—that the Governor General in Council would be pleased to invite the opinions of the Local Governments and of the several High Courts as to whether it is or it is not desirable to amend the section in a particular way. I therefore beg the Government of India to invite the opinions of the Local Governments as to whether or not the particular section should be amended in a particular way. That is what I pray for."

The Hon'ble the Vice-President:—"That is not the Resolution."

The Hon'ble Rai Sita Nath Ray Bahadur:—"That is my Resolution, and how would the Council be prejudiced by inviting opinions I cannot see."

The Hon'ble Sir Ali Imam:—"May I say a word, Sir. The Resolution of the Hon'ble Rai Sita Nath Ray Bahadur is one in regard to which we in our Department had some discussion, and after very careful consideration it was decided that the Hon'ble Sir William Vincent would deal with it. As a matter of fact it has been dealt with, and, if I may say so, the Hon'ble Sir William Vincent has said that this matter cannot at present come up for consideration, but that hereafter, if an occasion arose, there would be time enough to consider the arguments which have been advanced by the Hon'ble Member. Well, the Transfer of Property Act is one in regard to which, in my Department, I receive many suggestions, and we have in view the revision of some of its various provisions. Therefore, it seems to me that the Hon'ble Mover need not at present press his Resolution, because in the reply which has been given on my behalf by the Hon'ble Sir William Vincent, encouragement has been given to him to hope that hereafter this matter may receive the consideration of Government. It seems to me that the Hon'ble Mover is more or less under the impression that there has been want of sympathy on our part so far as the Resolution goes. As a matter of fact there is no want of sympathy at all. The form in which the Resolution stands is open to objection, and we are not disposed to send it to Local Governments to invite their opinions. But hereafter the substance underlying the Resolution will probably come up and will no doubt receive our very careful consideration. That is the position, and I think, if I mistake not, that is what the Hon'ble Sir William Vincent said in his speech."

970 RESOLUTION RE AMENDMENT OF TRANSFER OF PROPERTY ACT; RESOLUTION RE FURLOUGH RULES FOR THE PROVINCIAL CIVIL SERVICE.

[*Rai Sita Nath Ray Bahadur ; Srijut Ghanasyam Barua ; Mr. Wheeler.*] [10TH MARCH, 1914.]

The Hon'ble Rai Sita Nath Ray Bahadur :—“ Sir, after the assurances given by the Hon'ble the Law Member, I have no hesitation in saying that I withdraw the Resolution, as he was good enough to say that it will receive the early attention of the Government of India. I understand that the Transfer of Property Act is going to be revised, and I wish that the matter at that time will receive the careful attention of the Government of India. I am very much obliged to the Hon'ble the Law Member. ”

The Resolution was, by permission, withdrawn.

RESOLUTION RE FURLOUGH RULES FOR THE PROVINCIAL CIVIL SERVICE.

The Hon'ble Srijut Ghanasyam Barua :—“ Sir, as it is very late in the day, and as I think it will be better to have an interview with the Member in charge on the subject, I will not move the Resolution this Session. Therefore, I would like to have your permission to withdraw the Resolution, keeping the right of moving it later, if necessary. ”

The Hon'ble Mr. Wheeler :—“ I will be very happy to explain any point connected with his Resolution to the Hon'ble Member on which he may wish for information. ”

The Resolution was, by permission, withdrawn.

The Council adjourned to Saturday, the 21st March, 1914.

W. H. VINCENT,

*Secretary to the Government of India,
Legislative Department.*

DELHI :

The 30th March, 1914.