

THE Servant of India

Editor : V. S. SRINIVASA SASTRI.

VOL. I., NO. 31.]

POONA—THURSDAY, SEPTEMBER 19, 1918.

[ANNUAL SUBSK. : Rs. 4

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TOPICS OF THE WEEK.

THE Allied advance on the Western front is going merrily forward. Even apart from the question of actual gains—and they are many and substantial—the continued success of the Allied arms would prove very valuable in sustaining their spirit and stiffening their resolve. It is not only on the northern half of their front that the advance is being made. In the direction of Lorraine a great attack was launched to the south and the west of St. Mihiel by the French and the Americans, and the important salient has been taken by the Allies. The Italians are active in a similar manner, so that before winter puts a period to the operations the Allies would find themselves in safe and advantageous positions all round.

A PEACE offensive is being organised by the Central Powers as if in reply to these efforts of the Allies. Declarations, formal and informal, are made by persons, official or otherwise, stating the terms on which peace can be concluded. Austria-Hungary, the weakest member of the enemy combination, is 'cracking' and has addressed a note to all the belligerents inviting them to meet on neutral ground to indulge in non-committal talk about peace. All this is very amusing. But the Allied nations are not to be fooled in this way. Once again has the Premier of Great Britain declared, 'We will fight to the end.' The first condition and the surest foundation of all peace was the victory of the Allies. But the Premier was not unreasonable. The peace he wants must be such as would commend itself to commonsense and must not be dictated by the extremists on

either side. We wonder if the Central Powers are serious in their desire for peace. If they were, there should be few difficulties in the way of a lasting and durable settlement.

SERIOUS rioting, resulting in a large number of casualties and seizures, followed in Calcutta last week upon the prohibition of a public meeting of Mahomedans there. The meeting was to have been held under the auspices of respectable leaders of the Moslem community, whose connexion with the movement, should have been regarded a sufficient guarantee that no breach of the peace could in reason be anticipated. Where probably a friendly warning would have sufficed, the authorities thought it the part of prudence to put a ban upon the meeting. This prohibition was only meant, Lord Ronaldshay afterwards assured Moslem leaders, to operate for a short time during the Bakr-id holidays and that no indefinite deprivation of one of the most cherished rights of the people was intended. But this assurance came too late. The prohibition, which was worded in far too comprehensive terms, had done its execution. This way of dealing with the excited feelings of the public is most to be deplored and is utterly inexcusable. The most regrettable part of the affair, which shows how the authorities are unprepared for such an emergency, is that although rumour of the impending disturbance was thick, no measures had been devised beforehand by the police authorities.

THE Hon'ble Sir Dinsha Wacha put a number of questions at a recent sitting of the Supreme Legislative Council relating to the present position of Indian currency and elicited some interesting replies. In answer to an inquiry as to the stock of rupees and the prospect of its being increased in the near future, Sir William Meyer stated that the balance of silver coin in the Paper Currency Reserve at the commencement of the official year was 10.40 crores and on 7th August 8.19 crores, though Government had issued in the interval 16.79 crores of rupees as against 1.31 and 1.68 in the corresponding periods of 1917 and 1916 respectively. This shows how heavy is the demand for rupee currency, supplemented though it is by a steadily increasing supply of notes. Every effort is being made to import sufficiently large quantities of silver from the United States of America, and we are told that regular shipments

are being received and will be received in the future to enable Government to meet the abnormal popular demand for currency. We are glad to notice that Government have gone further in this matter and have taken all possible steps to increase the coining capacity of the Bombay and Calcutta mints so as to enable them to deal with the large amount of silver that is arriving in India from America. The assistance of the Hyderabad mint has also been sought, and His Exalted Highness the Nizam has consented to allow that mint to undertake the coinage of bronze quarter anna pieces so as to relieve the pressure on the Calcutta mint. With these and the other improvements which have been effected, the two mints, between them, are expected to coin 25 lakhs of whole rupees per day, and the output may increase to 30 lakhs a day in course of time.

* * *

WHAT is the relation of this steadily growing volume of currency to the high prices which prevail in the country? This is a question which naturally suggests itself to one studying the currency situation. And it has long been held by many, whose opinion is entitled to respectful consideration, that high prices in India have, in the past, been largely brought about by the Indian gold exchange standard and the token rupee currency which characterises it. Sir Dinsha Wacha asked Government whether the increase in the volume of currency during the last two years was normal and justified by normal causes such as the growth of population, trade and wealth or it was due to abnormal causes which eventually led to 'inflation?' Sir William Meyer was not disposed to enter into a discussion of this complex question in the course of a reply to a question put to Government in the council, but he made it quite clear that Indian currency, in his opinion, could not be said to have been inflated by the Indian Government's coinage and note issues. And the Finance Member repeated certain observations he had made in reply to the debate on the last Financial Statement denying that Indian currency policy was partly responsible for prevailing high prices. Now, there can be no doubt that a large part of the increasing volume of currency is necessitated by the present peculiar war conditions. But it is equally undoubted that a huge issue of a token currency must inevitably cause inflation.

* * *

COMMENTING on the refusal by the Cabinet to give a day before the adjournment for the discussion of the reform proposals—'in itself a disquieting symptom'—the *Nation* infers that the discussion is delayed because there is opposition within the Government; and that this opposition comes in all likelihood from Lord Curzon. From private sources also we gather that trouble is apprehended from Lord Curzon, and that Lord Milner, who is not in the Cabinet, will support him in his reaction. The Sydenham group is of course doing all it can to wreck the scheme. A correspondent writes to us:

"Every virulent untruth and distortion of facts and language has been employed to secure the sidetracking not merely of this scheme but of all reforms. And your own left wing appears to be playing into the hands of our reactionaries in a light-hearted way, and in complete ignorance of the effect upon the psychology of the average man here. . . . Mr. Montagu and those who are working with him for a new India will be swept aside and ignored and all reforms for India will be postponed indefinitely." The same fear has found expression in *India* of Aug. 2: "So long as, on the one hand, the extreme wing of the Nationalist party is attacking the very fundamentals of the scheme, so long as the War Cabinet maintains an attitude of dignified aloofness and cannot apparently make up its mind that the Montagu-Chelmsford recommendations embody in principle the policy announced last August, we feel that the reforms are in great jeopardy."

* * *

THE same paper has the following: "We frankly confess that we cannot understand how responsible people in India, without all the facts before them, and so short a time since the publication of the report, have allowed themselves to come to the conclusion that they may properly call upon the Indian National Congress to condemn the scheme root and branch. It is fair to assume that they accepted, in the right spirit, the pronouncement of August 20 last. If so the criterion by which they should judge these proposals is whether they carry out the policy set forth therein. They seem, however, to be so carried away by their objection to what they regard as the many defects in detail that they have already come to the conclusion that the scheme is useless before an attempt has been made to see if it is or can be made workable. They cannot see the forest for the trees."

* * *

THE London correspondent of the *Times of India* mentions that the work of drafting the bill on Indian constitutional reforms has been entrusted to the Hon. Hugh Godley, the son and heir of Lord Kilbracken, who as Sir Arthur Godley was for more than a quarter of a century Permanent Under-Secretary to India. Mr. Godley holds, the correspondent adds, if not the first place, at least the second as a Parliamentary draftsman.

* * *

ANXIOUS inquiries are being made about the condition of Pandit Hirday Nath Kunzru, who is ill with typhoid in Bombay. This is the seventeenth day of the illness, and although the crisis is not yet passed he is somewhat better now, and, it is expected by the doctors attending on him that he will make continued progress towards recovery, during the next week. Dr. H. S. Deva has also been suffering from dropsy; he is at Dr. Bhajekar's hospital in Bombay and is making satisfactory improvement.

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THE EDUCATIONAL SERVICES.

It will be remembered that in October last the Government of India addressed a circular letter to the local Governments, suggesting certain changes in modification of the recommendations of the Public Services Commission on the reorganisation of the educational services and inviting a discussion of the proposed changes by provincial committees. It would appear that such committees have been appointed and have considered the Government of India's proposals and that some of the local Governments have submitted their views to the supreme Government on the points raised in its circular letter. Among the replies thus received, that of the Government of Bombay stands out from the rest by its sympathetic appreciation of the Indian standpoint in certain features and deserves special consideration. The Public Services Commission recommended the transfer from the provincial to the Indian Educational Service of about a third of the posts then included in the latter, so that, as a result of this change, the proportion of Indians to Europeans in the higher grades of the educational service would be 1:3. It further recommended that vacancies occurring in these superior posts should be filled in such a way as to preserve this proportion as far as possible, but that future additions to the cadre should be distributed equally between Indians and Europeans, thus ensuring that the proportion of Indians, although it might tend to approximate to that of Europeans, would never equal it. This arrangement was devised in obedience to the basic idea that considerations of policy and expediency required that there should be a due admixture of the Indian and European element in the department of education. This idea, which forms the groundwork of the whole of the Commission's recommendations in this respect, has been assailed by the Indian public, who maintain that the Indian Educational Service should belong really to the third class of services, to be recruited almost wholly in India. The Government of India seem to recognise, in however guarded language, the reasonableness of the popular view, for they admit that the bulk of the service must ultimately be manned by Indians, though in the circumstances now prevalent this is not immediately feasible, and the modifications suggested by them are intended "primarily to effect as regards the immediate future a stage of transition between the past, when education was largely in the hands of Europeans, and the time when the reverse will be the case." This transitional stage will best be provided, in their opinion, by filling the existing vacancies in the Indian Education Service (some 37 in number) by recruitment in India, with the result that with the reduction of a number of posts of research professors and an increase in the recruitment of Indians in England, the Indian element "at the outset would more nearly approximate to the European."

The Bombay Government give a more whole-hearted allegiance to the principle that the educational service should be essentially Indian and are, therefore, prepared to advocate bolder changes in its constitution, calculated to secure wider utilisation of indigenous agency. They say in their reply that they are "not averse from accepting the proposition (apparently advanced by the provincial committee) that the Indian Educational Service should be primarily an Indian Service." Further on they say that "on the ground of policy it is the view of this Government that there should be a very large increase of the Indian element in every service, which does not, in the public interests, require a preponderance of Europeans for some years to come, and it is held that the Indian Education Service is one of the services which would not materially suffer by having a majority of Indian officers." They, therefore, agree with the view of the provincial committee that, in the period of transition, the proportion of Indians to Europeans should be approximately 3:1. The proportion recommended by the Commission is thus reversed in the Bombay Government's recommendations, and this is, it must in fairness be admitted, a substantial and satisfactory advance. Leaders of opinion in India have advocated—and indeed it was the view of the Commission of 1886—that recruitment in England should legitimately be confined to those "branches of knowledge in which the European standard of advancement has not been attained in India;" and that "the recruitment of Professors should be ordinarily of specialists, and, when practicable, for a term of years, with power of reappointment." Mr. Justice Abdur Rahim has expressed himself in favour of reserving some 90 posts for recruitment in the above manner. It will thus be universally recognised that the eventual Indianisation of the educational service being kept in front of us as a goal, the proportion of 3:1 in the Indian and European elements is a satisfactory stage for the present in our advance towards that goal.

Generally, proposals of an extended use of the Indian agency in the public services are found to be accompanied by proposals for an improvement in the emoluments of the European agency, as though the underlying idea were that what was lost in the number of officers must be made good at least in part in their increased salaries. The Public Services Commission, which recommended the admission of one quarter of Indians in the superior grades of the education department, also recommended the increase in the average monthly emoluments of a member of the I. E. S. from Rs. 970 to 1,043, thus throwing on the resources of India an additional burden of about 9½ lacs. But the scale proposed by it, viz., Rs. 550-50-1250, with two selection grades beyond carrying the outside limit to Rs. 1750 is found insufficient by the Government of Bombay, and they feel entitled, in view of the reduction in the proportion of the European section to press for correspondingly more

favourable terms for it. In fact, they expressly put it on that ground. After arguing that it is "absolutely necessary to grant substantial increases of salary," they go on to say that this "course will be greatly facilitated by the immense reduction proposed in the number of posts open to Europeans." It is regrettable that the Montagu-Chelmsford report also is disfigured by this piece of irrelevant reasoning, for deprecating the Indian opposition to the improvement of the conditions of the European services, the report expresses the hope that "if proposals for such improvement are accompanied by increased opportunities being given to Indians in the services the opposition will cease." This hope, we feel sure, is destined to disappointment, for Indians will continue to offer uncompromising opposition to plans of increment in the salaries of officers, who are already paid on much too vast a scale, without parallel in any country and out of all correspondence to the resources of India. The flaw in this reasoning has been mercilessly exposed by Mr. M. B. Chaulal in his minute of dissent. If a concession is to be made to the European services, he argues, it cannot be supported by the reasons advanced by the Bombay Government, which are identical with those contained in the reforms report. He says:—

"The reason for making this concession is not in my opinion the fact that the percentage of Europeans in class I. will be reduced from 75 to 25. In my opinion this reduction has no bearing on the question of the adequacy of salary. If a scale is adequate for 75 per cent. of Europeans, it ought to be in my opinion equally adequate for the reduced percentage."

The plea of Mr. Montagu and Lord Chelmsford on behalf of the European services can only be intended, therefore, to conciliate the opposition of the latter to the reforms, but we shall be profoundly surprised if we find the Indian people in a mood to reconcile themselves to the sop thus offered to those who usually range themselves on the side of reaction. The Bombay Government are extremely liberal with Indian money and propose that the European scale of pay should be Rs. 750 rising by equal annual increments to Rs. 2,000. Such a stupendous increment is defended on the ground that otherwise men possessing the highest qualifications cannot be induced to join the Indian Educational Service. There is evidence to show that this is not a fact, but if it were the case that the service could not be filled with a quarter of Europeans on smaller salary, the inference would be irresistible that none but specialists with qualifications not to be found in India should be employed from abroad—a conclusion to which a former Commission had arrived thirty years ago independently of the special circumstances by which, in the opinion of the Bombay Government, an increase in salary has been rendered necessary. So great becomes the disparity between the scales of pay of Indian and European officers, in case the Bombay Government's proposal is carried into effect, that any pretence at an assimilation of rates by allowing, an extra allowance or

otherwise, becomes vain. Against this Mr. Chaulal naturally enters a firm protest. "I am not prepared," he says "to give up the principle laid down by the Commission that in the higher and administrative posts in any department there should be no difference or distinction between the salaries of the Indian and European." And here he but echoes the sentiment of the Indian people.

MARRIAGE REGISTRATION.

IN addition to the Hindu Marriage Bill of the Hon. Mr. Patel which is now before the Imperial Legislative Council, there is before the public another bill of a somewhat similar nature *viz.* the bill for the voluntary registration of marriages among Mahomedans recently introduced in the Madras Legislative Council. It appears that as India progresses, there is likely to be a growing volume of opinion against the antiquated nature of several of our social customs, and in the reformed legislative councils of the future there are sure to arise very heated controversies when the question of reforming any of these customs comes forward. It may, therefore, be considered not out of place to lay down the ideal towards which any reform must gradually approach. It will not be possible to attain that ideal immediately; but our judgment on any particular measure will necessarily be influenced by the consideration whether such a measure makes the attainment of the ideal easier or more difficult.

Civil society is intimately concerned with the three main facts in the history of an individual, birth, marriage and death. Civil authorities have to pronounce judgments founded on facts concerning these three cardinal events. Any ideally constituted society must, therefore, have a complete, unchallengeable and absolutely correct record of these events. No civil society can be regarded as completely organised without such a record. In this country births and deaths are supposed to be recorded by the local authorities, but a fair reliance can be placed on the record of deaths only. Anybody, who has had occasion to examine the reports of vital statistics published annually by Government, must have observed how the figures relating to births are often untrustworthy. The Poona municipality had to be reminded of its laxity in this matter last year, for it was observed that the children under three years whose deaths were recorded in municipal limits numbered about three times those whose births were recorded. This could not be explained by the practice—common in Bombay—of sending out expectant mothers to the mofussil for confinement, for the population of Poona is largely stationary. It was simply due to the want of proper attention to the recording of births; and when it was proposed to enforce the law requiring the registration of births strictly, several city-fathers held up their hands in horror at the consequent oppression of the people. But

it is now fairly agreed, at least in theory, that the state must keep a correct record of births and deaths and we hope that an intelligent municipality like Poona will use for this purpose a more efficient agency than sweepers or at the utmost their *Muccadams*.

We wish to lay down the proposition that the recording of marriages is also a necessary duty of the state which it is criminal—at least symptomatic of backwardness—to neglect. All relations between individuals have their roots in matrimony, and for the state to be able to perform all its functions properly, it must have a complete record for the purpose. The devolution of property, the rights of kinship and family, the whole field of personal law require this record. Till recently, when Indian society was practically static, the range of an individual's relations extended over the village and its immediate neighbourhood. Now when the population is growing more mobile the old state of things has grown antiquated. The ceremonies connected with marriages in any caste were calculated to ensure the necessary publicity for the marriage under old conditions. But several of these have become already unmeaning. Thus the ceremony of Vangnishchaya or oral betrothal was initially somewhat similar to the publishing of banns; now it has lost its pristine significance and is performed only a few hours before the regular ceremony. The celebration often of a ruinously expensive character of marriages itself was of this kind. But to many such expenditure has become impossible. Again to persons of advanced ideas the religious part of the ceremonial has become almost a meaningless mummery; the whole is performed in Sanskrit in the case of the higher castes which is badly spoken by illiterate priests and depends on beliefs in nature, gods and goddesses which have largely disappeared for the practical purposes of life. Further, there are, of course, the restrictions which Mr. Patel's bill seeks to do away with.

Our thesis is that in an ideal state it should only recognise marriages that are legally registered. The state should not concern itself with religion or religious practices which should be an individual's own concern. The state should see that the parties seeking to be united in wedlock are capable of forming a just conception of their responsibilities and are not affected with any disease which would be inherited by the children of such unions and would make them burdensome to the state. In the ideal state, of which we are thinking, minors ought not to be allowed to marry, nor consumptives, habitual drunkards, lepers &c. But beyond this the state in its corporate capacity should not go, except to insure monogamous marriages only. In fact each marriage should have two aspects, the one legal, the other religious. The first should be obligatory for all, the second voluntary, enforceable only by the particular communion to which the individuals belong. Thus if a man should marry out of his community in

accordance with Mr. Patel's bill, he may be excommunicated by his community if it likes, and the state should not interfere with such measures.

Legal registration of marriages would necessarily involve certain limited facilities for divorce. Though divorce should be discouraged by public opinion as far as possible, and is generally against the interests of children, if any, of the marriage, still circumstances may arise in which the consequences of withholding divorce would be more serious particularly to the children than if it were granted. We shall discuss the question of divorce in detail at another time. Suffice it to say that though it appears so outrageous to the ideas of Hindus of the higher castes, still in the ideal state of society that we are considering it is a necessary facility. Here again law will have nothing to say against any reasonable social ostracism of the divorced persons.

In most of the fully organised countries of the West, there is a uniform law of succession. Thus in England there are no separate inheritance laws for Roman Catholics, Churhmen, Quakers or Jews. In India each community has its own laws of succession. When marriage, so far as the state is concerned, has taken a civil form, the law of succession will have to be settled for every case or the lawyers must make a special uniform law of succession for everybody to whom the sectional laws cannot be shown to apply for certain. The presumption will then be in favour of this standard law. But this is a technical subject to be left to lawyers to whom we recommend it for consideration in all its manifold aspects.

We give our support to both the bills referred to above as they tend in the directions pointed out above. Both are for the present permissive bills as they should be when innovations are being introduced. People must be educated by actual experience to better things. On the other hand, sane public opinion ought to give its support to permissive measures of this sort. Nothing is gained—only an amount of irritation is caused, often leading to open revolt in the form of conversion to another religion in the case of the Hindus—by persisting in the present religious restraint on individual liberty in this question of marriage. The great desideratum is a single uniform law for the civil registration of monogamous marriages; and we trust that the authors of these bills will hammer away at the question they have taken up until the end is achieved.

R. P. PARANJPYE.

ACCUSED AS WITNESSES IN THEIR OWN TRIAL.

THE question is whether a person accused of an offence and upon his trial in a court of law should be examined as a witness in the trial. The Government of India with a view to introduce the provisions of the English Law as laid down in the

Criminal Evidence Act 1898, (61 and 62 Vict. Cap 36) have invited opinions of all Provincial Governments, and the latter have in their turn invited their leading officers and important bodies and associations within their provinces to consider the advisability or otherwise of a change in the Indian Law of Criminal Procedure on the lines of the English Act of 1898. It is proposed to examine this English statute and to consider the advisability of introducing this statute in India.

Before going to the Act itself, a short history of the Law in England on this point would not be out of place.

The rule in England was that no one who had any interest in a proceeding, whether civil or criminal could be examined as a witness to parties to a proceeding. "*Nemo in propria causa testis esse debet*" was the rule of the old law, a rule which applied equally to civil and criminal proceedings, and which was founded solely on the interest which the parties to the suit were supposed to have in it. Therefore, whenever it appeared that a person, although a party, had no interest in the events of the suit, or had ceased to have any such interest by reason of a compromise, withdrawal, or abandonment of the claim in such part of it as concerned him, it became permissible to examine him as a competent witness. Their interest in the suit might tempt them into perjury and thus they were entirely kept away from all temptation of this nature.

When, however, an issue was directed from the Court of Chancery to be tried in a court of law, it was frequently made part of the order that the plaintiff or defendant may be examined as a witness, and a similar provision was made in a reference to an arbitrator. In the reign of William IV, in the year 1833, an attempt was made to remove this incompetency from witnesses; but it was till the year 1846, when by (9 and 10 Vict. C. 95) the new County Courts were created, and parties to the suit were for the first time allowed to give evidence in all cases in those courts. By section 83 of that Act it was enacted that,

On the hearing or trial of any action, or on any other proceeding under this Act, the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant upon oath, or a solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court.

Several other exceptions to the rule excluding the evidence of parties to a suit or proceeding were introduced by modern statutes until the incompetency of parties was almost abolished by the Evidence Act 1851, (14-15 Vict C 99,) so far as civil proceedings were concerned.

One of the exceptions to the general rule as to the incompetency of parties to be examined as witnesses was accepted in regard to the prosecution or complaint in a criminal case. These persons were admitted as witnesses even under the old practice, and Lord Denman's Act (6 and 7 Vict. c. 85) which abolished generally "incompetency from

interest," removed all objections on this point. But the position of an accused person is different. As to him, his evidence was to be inadmissible on two grounds (1) that no person is bound to criminate himself, and (2) that evidence of an interested person is worse than useless. As regards the first the practice in England and on the Continent was to cause statements to be made by the accused as being voluntarily tendered, but which in a large number of cases were compelled from the prisoners, and although the rules of their admissibility into evidence were hedged round by all kinds of exceptions and safeguards, still the character of the statements or confessions have not emerged from the charge of compulsion which almost always attaches to them, and the judges in all parts of the world are slow in admitting or relying on these confessions. It is rather under the second of the two principles indicated above that the present rule falls. While the party, who prosecuted was always competent to give and did give evidence in the case in which he was the prosecutor or the complainant, the accused was not. The inconvenience as well as possible injustice of shutting out the testimony of the party prosecuted gave rise to much public discussion during the closing years of the last century and the result was incorporation in a large number of statutes passed in or after 1872, of a clause enabling the party charged to give evidence on his own behalf. These enactments were 28 in all. Chiefly among these may be mentioned the Licensing Act 1872, (35, 36 Vict. c. 94, s. 51 sub. s.4) by which " in all cases of summary proceedings under this act the defendant and his wife shall be competent to give evidence. " Similar provisions may be found in the Sale of Food and Drugs Act 1875 (38 and 39 vict. c. 63 s. 21) the Conspiracy and Protection of Property Act 1875 (38 and 39 vict c. 86 s. 11) and the Criminal Law Amendment Act 1885, (48 and 49 Vict. c. 69 s. 20). The charges on which an accused person might give evidence on his own behalf included abduction, rape, indecent assault and various sexual offences, some of them first made criminal in 1885; also the charges of offences by persons licensed to sell intoxicating liquors, of breaches of special contracts of service, and of libel. It was only under the Criminal Law Amendment Act of 1885, that the accused was afforded an opportunity of giving evidence on a charge of felony. The Evidence Act of 1877, under which, in a trial of any indictment or proceeding instituted for trying a civil suit only, the defendant became compellable as well as competent to give evidence as a witness.

So far back as 1878, an attempt was made by the Government in England to deal with matters in accordance with principles of these statutes. The Criminal Code Bill of that year contained a clause to the effect that every one accused of any indictable offence might make a statement on which he might be cross-examined, but added the important proviso, that " the defendant should not be sworn as a witness nor be liable to any punishment for making false statements. " The Commissioners

Lord Blackburn, Barry J. and Lust J. and Sir James Fitz-James Stephen) to whom the Bill was referred were divided in opinion as regards "the policy of change in the law so important," but were on the whole of opinion that "if the accused was to be admitted to give evidence on his own behalf he could do so on the same condition as other witnesses subject to some special protection in regard to cross-examination." They also suggested the inclusion of a clause that an accused person and the husband or wife of an accused person should be competent, but not compellable witnesses, and liable to a cross-examination which the court might limit so far as it might extend by credit. In 1880 a bill was referred to a select committee of the House of Commons which was cut short by a dissolution. For very many years several attempts were made in the same direction. Lord Bramwell's Bill frequently passed the House of Lords. In 1888 the Government Bill was fully debated in the House of Commons, and though speakers after speakers came to give it their strong support by referring to cases where great injustice was done, or believed to have been done on account of the absence of law like this, it failed to pass, on the ground of Irish members not being able to obtain the exclusion of Ireland from its operation (of this more hereafter). Finally in 1898, was passed the Criminal Evidence Act 1898, (61 and 62 Vict. 36) which received the Royal Assent on 12th August, 1898. The following is a short summary of its provisions :—

Sec I. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely by or jointly with any other person. Provided as follows:—

- (a) the person so charged is not to be called except on his own application ;
- (b) the failure to give evidence is not to be commented on by the prosecution, a qualification not applicable to the judge ;
- (c) the wife or the husband is not to be called except on the application of the person charged ;
- (d) the disclosure of communication during marriage is not to be enforced ;
- (e) a person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged ;
- (f) a person charged and called as a witness in pursuance of this Act, shall not be asked, and if asked shall not be required to answer any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged, or is of bad character unless
 - (i) the proof that he has committed or has been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged, or
 - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character or the nature, or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

Sec. 7. excluded the application of this Act to Ireland.

This in short is the history of the law on this point.

J. R. GHARPURE.

THE REFORM SCHEME AND THE INDIAN RAILWAY BOARD.

THE Report by Lord Chelmsford and Mr. Montagu on the Indian Constitutional Reforms does not touch the question of reforming the Indian Railway Board. In its paras 38 and 49, where all Departments of the Government of India are detailed, no mention is made of the Railway Board nor is there any proposal about it in chapter IX, which deals with the reform of the Government of India. The reform of the Indian Railway administration has been totally left out, probably because this matter was not directly taken up in the Congress-League Scheme, the framers of which have been relying upon the belief that with the reform of the Legislative Council of India, they would be able to effect the necessary reforms in the Railway Board as well, but it seems such would not be the case without a specific provision in the statute embodying the reforms. If this view be correct, it is not too late yet, to take up the matter specifically. The reform of the Railway Board is as necessary as that of any other Department of Government. Upon the proper administration of the Indian Railways depends the economic growth of the whole country; including agriculture, industries, trade and commerce, comforts and conveniences of the travelling public, etc, etc. The reform of the Railway Board must be carried out simultaneously with the reforms of the local Governments and administrations and the Government of India.

It is surprising that the Report under reference dealing as it does with all other branches of Government machinery, has left out one of the most vital parts of that machinery.

According to the Report of the committee of 1908 on Indian Railway Finance and administration, the Railway Board is in the position of a Local Government, although it exercises the powers vested in the Government of India, exercising control over the entire railway system of India. As all local Governments are to have reformed Councils, it is not understood why the Railway Board alone should be left out of the scheme of constitutional reforms.

The present Railway Board consists of four members, viz :—

- (1) Member of the Governor-General's Council.
- (2) President of the Railway Board.
- (3) An expert in railway construction.
- (4) An expert in railway traffic.

This constitution has purely an official element. It has no non-official member to represent

the general public, or the commercial and industrial concerns. These are serious defects in the present constitution and should be remedied. As a Local Government, the Railway Board should have an Advisory Council, as well as an executive Board, the latter to have representatives of commerce, industry, agriculture and the general public, in addition to the present members of Railway Board. The Advisory Council should have elected representatives of the various interests from each of the main Provinces, viz:—Bengal, Bombay, Madras, United Provinces, the Punjab, Central Provinces, Behar and Orissa, Delhi, Ajmir-Merwara and Burma, who should have the power to elect the non-official representatives on the Executive Board.

The subjects to be dealt with by the Advisory Council of the Indian Railway Board should include—

- (1) all questions of policy in connection with the working managements and construction of railways ;
- (2) important changes in rates and fares for goods and passengers and other traffic ;
- (3) comforts, conveniences and accommodation for passengers and goods ;
- (4) new projects for railway extensions ;
- (5) new contracts to be made with railway companies or changes to be made in their existing contracts ;
- (6) matters relating to Railway finances ;
- (7) matters relating to railway staff and establishments ;
- (8) important changes in passenger trains.

To ensure sound working of the railways the best arrangement would be to provincialize the state railways and their administration, as the railway concern in India is so large and unwieldy that it cannot be properly controlled by a single Central Board. This management would remove the complaint often made that the Government of India have not the time to administer properly the large mileage of Indian railways. By provincializing the railways, I mean that the administration and control of all state railways within the boundaries of provincial Government should be placed under the local Governments and administrations. Taking for instance, the E. I. Railway which runs from Kalka to Howrah through the following provinces :—

1. The Punjab.
2. The United Provinces.
3. Behar Province.
4. Bengal.

The portion of this line together with all other state railways in each province might be under the Provincial Government concerned.

An objection might be raised that such a division of a single railway might create difficulties in working, but such difficulties are more imaginary than real. The division of main lines might be carried out according to the provincial boundaries, utilizing as far as possible, the exist-

ing districts and divisions of the Engineering, Locomotive, and Traffic Departments of the Railway, which have separate charges administered by the District Officers. If any of the Districts covers more than one province, its boundaries might be altered to correspond with those of the province. As all the state railways belong to one state, there should be no difficulty in carrying out this arrangement. In Europe similar main lines, say from Brindisi to London, Christiania or Stockholm are owned by four or more independent states or companies. In India itself, we have several independent railway administrations between Peshawar and Bombay or between Madras and Cawnpore, etc., etc., yet there is no difficulty in working or accounting of the through traffic. The existing arrangements in India for interchange of rolling stock and for booking and accounting of through traffic worked by different railway administrations could be applied to provincial railways. By placing the control of the railways under the provincial Governments, we would secure that control and direction which is necessary for the efficient and economical administration of the railways and which cannot be exercised by a central body like the present Railway Board.

This idea of provincializing the Indian railways is not a novel one. The Indian railways, both companies and state, in their early days up to the year 1871-72, were under the provincial Governments, and there were a number of state railways which were classed as provincial. Their classification was subsequently altered from Provincial into Imperial, as most of the State Railways are now classed. Some of the railways are, however, still under the control of the Bombay and Madras Governments, although they are classed as Imperial, Private or otherwise. In 1884 the late General Richard Strachy R. E. who was a Member of the India Council, and had a very wide knowledge of Indian railways, was strongly in favour of decentralization of Indian railways, but the proposal was not carried out owing to the introduction of the agency of companies after that year. The time has now come that the proposal should be revived and the necessary decentralization carried out.

When the Railways are provincialized, we should have Provincial Railway Boards, consisting of 15 to 20 Members, representing the various interests concerned, say :—

- (1) members in charge of the railway portfolio or the Minister of Public Works ;
- (2-6) the agents or managers and other officers of the provincial state railways ;
- (7-12) six Local representatives elected by the following bodies,

- (a) Indian Chamber of Commerce.
- (b) European Chamber of Commerce,
- (c) industries,
- (d) agriculture,
- (e) banking Associations, and
- (f) the general public.

(13-18) A representative of each of the following departments of Government, namely :—

- (a) the Post Office and Telegraph,
- (b) finance,
- (c) commerce and Industry,
- (d) agriculture, and
- (e) the military.

The subjects to be dealt with by the Provincial Railway Boards should embrace—

- (1) working and management of existing lines,
- (2) additions and alterations in the number and timings of passenger trains;
- (3) rates and fares for goods, passengers and other traffic,
- (4) comforts and conveniences and necessary accommodation for passengers and goods,
- (5) further extensions of railways;
- (6) financial matters of railways.

The following will be the advantages of provincializing the Indian Railways :—

- (1) the local requirements of the people will receive due consideration from the local authorities;
- (2) the work which is generally regarded as unwieldy for a Central Government or a single body like the Railway Board, will be conveniently divided into seven or more provincial bodies;
- (3) it would improve the general efficiency of the railways and will tend to greater economy;
- (4) the provincial revenues would have a share from the surplus profits and would thus improve the position of the provinces;
- (5) in the matter of providing new lines or extensions of the existing ones, the local authorities would have a freer hand and would create local syndicates to raise the money needed for such provincial railways;
- (6) by general improvement and local share in the administration of railways, there would be great interest to be taken by the public in the railways and there would be a general advance in industries, commerce and general enterprise among the people leading to general prosperity of the country.

CHANDRIKA PRASAD.

A LETTER FROM LONDON.

(From Our Own Correspondent.)

LONDON, AUGUST 6.

LORD SYDENHAM'S HEROICS.

I HAVE just returned from an eight-hours' spell of Parliament. Both the Houses held festival to-day in honour of India. In the Upper Chamber, Lord Sydenham moved for papers—including the Rowlatt Committee's report, selected memorials to the Secretary of State and the Viceroy in the matter of Constitutional Reforms, 'the opinions of local Governments on the Montagu-Chelmsford proposals—and delivered a mighty—and mightily ineffective—indictment of the perpetrators of the report, in language that, but for its courtesy of form, was meet for the columns of the *Morning Post* and

the *Spectator* at their best. The hero-spokesman of the Indo-British Association had not epithets enough to condemn the impertinent intrusion of Mr. Montagu into Indian affairs. Why did he go to India at all, and why at the present time? How dare he foist upon a bewildered country a pronouncement like that of August 20 last, and was not the Viceroy, whose prestige had been diminished by Mr. Montagu's visit, a mere wax-figure in the hands of this Machiavellian conspirator? And then, as to the proposals themselves, had anyone ever read such a mixture of impossible and perilous propositions? If adopted, even in a modified form, the end of the Empire was at hand. What, indeed, did we find? Reforms were asked for only by an infinitesimal minority of extremists and seditious agitators, who really wanted to "cut the painter." To conciliate them was unworthy of British statesmanship and would throw the masses, the workers, the real India, into the hands of their remorseless enemies, the political Brahmins, an unscrupulous minority of power-seeking oligarchs. Lord Sydenham, the protector and sponsor of Dr. Nair, weeping metaphorical tears at the thought of such a fate, conjured up a tragic vision of India's future unless the *status quo* were maintained intact. But, as a sort of sop to Cerberus, he repeated the *Spectator's* suggestion that the Home Rule experiment might be "tried on the dog" in some district or half a province, with every possibility of its failure, pending which, as Lord Islington had no difficulty in showing, in a lucid reply well devised to meet an interesting situation, Indian unrest and dissatisfaction, throughout the country could only grow rapidly.

THE OTHER PEERS.

The ex-Governors—save Lord Carmichael—spoke, though rather more guardedly, in somewhat similar strain. Lord Harris was very lugubrious about the Hindu Moslem problem—which, by the way, does not exist in South India at all. Lord Lamington, on the other hand, was decidedly worried about the non-Brahmin question—which hardly exists in Northern India. Lord Carmichael spoke on the whole sympathetically of the principles underlying the reform proposals, as did Lords Crewe and Donoughmore. Lord Selborne suggested a Joint Select Committee of both Houses to consider the reforms in the light of all available information, and Lord Salisbury refused to commit himself and his friends so long as the Government had not adopted at least the principles of the reforms. Lord Curzon made it plain that the Government had no immediate intention of adopting the proposals until it had further information at its disposal based upon the reports of the two Committees to be immediately appointed, and the views of the local Governments, together with the Government of India's covering despatch.

THE DANGER FROM EXTREMISTS ON BOTH SIDES.

Lord Islington and Mr. Montagu are, therefore, for the time being, in the anomalous position of advocating publicly a scheme that has not yet received,

even in its broad outlines, the general sanction of the War Cabinet. On the other hand, the Cabinet will inevitably—if it is not prematurely stamped in the opposite direction by the folly of the Home reactionaries and the indiscretion of your own extremists—be driven to adopt the main features of the proposals, though it is plain that the authorities here are not wedded to the present form of any specific proposal, and it is likely that a good many changes may be made before a Bill is introduced into Parliament. Meanwhile, attempts will be made here to delay action so long as possible, and to insist upon communal representation for Europeans and non-Brahmins. Assistance will be lent to the former by the pre-occupation of the British electorate in their own affairs and to the latter by the disingenuous efforts that are being made to pretend that the real friends of the depressed classes are the non-Brahmin caste-people.

RECEPTION IN THE COMMONS.

In the Commons, after Mr. Montagu had moved the usual resolution on the East Indian Accounts, after five years, it was clear that the almost complete consensus of opinion was in favour of the general principles of the reform scheme. Mr. Ramsay Macdonald, in an excellent speech, gave it his blessing, and was followed by Sir John Rees, who, too, bestowed his benediction upon it. Mr. H. E. A. Cotton made a good impression with a maiden speech on the hereditary subject of India's needs and hopes. Mr. George Lloyd, a young Tory member, spoke in excellent terms of the report, and Mr. Charles Roberts pressed for an expression of opinion by the Government as a whole. Perhaps the most noteworthy contribution to the debate was that of Mr. Austen Chamberlain, who is now a member of the War Cabinet. He spoke earnestly and with an unquestioned sincerity, and it is evident that his support of Mr. Montagu's proposals—in substance—will mean a great deal when the Cabinet comes to make up its collective mind as to its course of action.

THE GENERAL SITUATION.

On the whole, India need not complain either of the reception of Indian affairs after so long a silence, or the prospects of the reforms, at the present preliminary stage. The road to be travelled is a long and difficult one before the Act is passed; but public opinion here, as it seems to be on your side, is crystallising around the nucleus provided by the Montagu-Chelmsford proposals. Much will depend upon the reports of the two Committees, whose personnel is to be announced shortly. A great need of spade work remains to be done in India. It should be upon the basis of the widest possible franchise and the largest possible transfer of powers in the Provinces that local circumstances permit. If only the leaders of your left wing keep their heads and can restrain the impetuous enthusiasm of their untried followers, the commonsense of the general public here will put the necessary check upon the activities of our reactionaries.

SELECTIONS.

THE INDIAN REPORT.

COMMENTS OF THE "NEW STATESMAN."

The Pronouncement of August 20th, 1917, which stated that the goal of the British Government was "the progressive realisation of Responsible Government in India, as an integral part of the British Empire," can be described without exaggeration as "the most momentous utterance ever made in India's chequered history." The Report on Indian Constitutional Reforms, just issued, contains the proposals through which the Government is to redeem their promise; it is an even more momentous utterance than the Pronouncement itself. In detail the proposals are extremely intricate; they will require strenuous testing in the fire of discussion, and some of them may not improbably fail to stand the strain of that test; but in their broad principles, to which in this article we must confine ourselves, they have discovered a formula for one of the most baffling problems of racial and political chemistry, the problem of how to fuse the people of India with the other peoples of the British Empire in a commonwealth of free nations.

The difficulty of the problem lies in the fact that the existing Government of India is an autocratic bureaucracy. The district and provincial officers, the Lieutenant-Governors and Governors, the Viceroy and the Secretary of State, in an ascending hierarchy which defies change with the solid sanctity of ancient things, are responsible only to a House of Commons sitting at Westminster which has forgotten India and the electorate of the United Kingdom which has never remembered it. Thus in India the rudiments and the rudimentary organs of Responsible Government are entirely lacking. The legislative and executive powers are in the hands of an alien bureaucracy; in the constructive and creative work of Government the people of India have no part at all; they have naturally devoted themselves to the only work left to them—namely, destruction and obstruction. There are no Indians trained in the difficult art of executive or administrative Government and there are no electorates to which such men, if they existed could be made responsible.

Meanwhile we ourselves have been steadily introducing into India for at least three generations the "ferment" of Western European political doctrines of freedom and self-government. The ferment was already working when Japan sprang into the constellation of the seven Great Powers, and by beating Russia set the East a glow from Peking to Constantinople. The glow burst into flames in the Turkish and Chinese revolutions, in Persia, and in the nationalist movements of India; and when Britain entered the war in order to uphold the right of all peoples to govern themselves, and when the Russian revolutionaries raised the flag of "self-determination." It became clear that we could no longer damp down with safety the demand for self-government or Home Rule in India.

But the difficulty of the problem remained. How in a country of 300,000,000 population, with practically no education, no political experience, no electorates—how is it possible to impose upon a bureaucratic autocracy, the beginnings of democracy and Responsible Government? The difficulty was increased by the fact that the attempt to meet the demand for "self-government" had followed a path which led the reformers and the Government alike up against a brick wall. The Morley-Minto reforms, the final stage in that path, were, from the point of view of democracy and Responsible Government, a political "cul-de-sac." The autocracy and the bureaucracy remained firmly entrenched with all the powers of Government, and responsible ultimately only to the electorate of the United Kingdom; the people of India were given power without responsibility, the power simply to criticise and obstruct the Government. The more politically self-conscious

India became, the more inevitably would such a system lead to political deadlock.

Unless these facts are realised an understanding of Mr. Montagu's and Lord Chemsford's proposals is impossible. Those proposals are founded upon these facts, the importance of which has been realised largely through the efforts and writings of Mr. Lionel Curtis. The proposals of the Report start from two anxieties inherent in the Pronouncement of August 20th; first that the goal in India is Responsible Government; and second, that it is to be attained by stages or progressively. It follows that the transition stage must be a system of dual Government, in which some of the functions of Government are entrusted to Ministers responsible to Indian electorates, while the residuary functions are reserved to the bureaucracy responsible to the Secretary of State and the House of Commons. This division of functions and of Government is the pivot of the proposed reforms and is derived from Mr. Curtis and the "Joint Address of Europeans and Indians" presented to the Viceroy on December 17th, 1917. The division, is however, worked out in the Report on somewhat different lines from that of the Joint Address and of Mr. Curtis. The system is to proceed from a large measure of Provincial devolution and a remoulding of the Provincial Executives and Legislatures. The devolution consists in the separation between the budgets of the Provinces and of the Central Government and the transference to the provinces of some powers of taxation. By these and other proposals a certain measure of Provincial autonomy will be secured. Having secured for the Provinces some power of managing their own affairs—power which is always inseparable from that of taxation and of spending the proceeds of taxation—the Report proposes to remould the Provincial Executive. In future it is to consist of one European member, one Indian member, Indian Ministers nominated by the Governor from elected members of the Legislative Council, and a member or members appointed by the Governor from the senior officials. The Legislative Council is to contain a considerable majority elected on a franchise which is to be as wide as possible. Certain functions of Government, which are to be defined by a special committee, are to be transferred to the Indian Ministers, and for these functions the Ministry will be responsible to the Legislative Council. Thus the proposals outline a formula through which some measure of Responsible Government can immediately be given to the Indian people, a formula so elastic that if it be honestly and sympathetically applied, it should rapidly produce electorates and Ministers educated politically and capable of giving India its place as a self-governing unit in the British Empire.

We have used the words "if it be honestly and sympathetically applied," for it is most important to realise that everything will depend upon the way and the speed with which the proposals are put into operation. The system outlined in the Report is not only a mere skeleton of a Constitution which will have to be filled in by Special Committees and Commissions; it is admittedly a transitional scheme for a transitional stage in India between autocracy and full Responsible Government. There are several points with regard to this which deserve notice. In the first place the Report—wisely, in our opinion—only lays down the broad principles of the proposed reforms, and does not attempt to determine, for instance, the nature and extent of the franchise or the particular functions of Government which are to be "transferred" to the Indian Ministers, or which are to be reserved to the Governor in Council. The working out of these details is to be left to Special Committees. The success of the experiment will therefore depend very largely upon the composition of these Committees and upon the spirit and the speed—particularly the speed—with which they do their work. Secondly, it is essential that the Government and the people of India should accept the reforms purely as a transitional stage in the development of Responsible Government. The system as outlined in the Report is not strictly Responsible Government at all. It differs in this res-

pect from the proposals of Mr. Curtis and the "Joint Address." In the latter proposals the Indian Ministers would be responsible to Provincial State Governments which would be distinct from the Provincial Legislative Councils, and a member of the elected assembly would himself form a Ministry. We should thus get a completely dual system of Government, one part composed of the bureaucracy working in the sphere of "reserved" functions through the old organs of Provincial Government; the other the Indian Ministry in the sphere of transferred functions working through, and responsible to the newly elected organ of the Provincial States. Lord Chelmsford and Mr. Montagu give their reasons for rejecting such a system. Their Indian Ministers are not strictly responsible to the Provincial Legislatures because they are chosen by the Governor and form part of the Governor's Executive. The object of this appears to be to get rid of the duality of Government. But, as a matter of fact, it is not possible, as the Report itself shows, to get rid of the duality in the transition stage between autocratic and Responsible Government; in so far as the proposals are successful, they must result in the establishment during the transition of a dual Government, one part consisting of responsible Ministers and the other of an autocratic bureaucracy. The Report makes it quite clear that the intention is that their system is purely transitional, and that in the near future the Indian Minister will be made fully responsible to the elected Provincial Legislature. It proposes machinery for making the transition effective. The whole system will be subject to review every five years by the Government of India and every ten years by a Royal Commission, and these revisions will afford the opportunity of increasing the transferred functions of Government, decreasing the reserved functions, widening the franchise, and introducing strictly Responsible Government. Much will, therefore, depend upon the spirit in which these revisions are carried through.

We have confined ourselves in this article to only one series of proposals in the Report, and there are an immense number of very important points to which we have not referred. We have done so, because the crucial question in India is that of Responsible Government, and that is bound up with the proposals with regard to the reform of the Provincial Governments. In the intricate material, the solid soil of this official document, there is buried a small seed from which, if it be properly tended and nourished, there may spring a strong and a free growth of Indian Government. That seed is the Indian Ministry in the Provincial Legislature. If it proves sterile, this Report with all its intricate machinery of Government, will prove to be only one of the many political failures which already cumber the earth, but if it germinate, it will grow and blossom and bear the wonderful and exotic fruit of political wisdom. Its success or its failure will depend primarily upon the people of India and the British services in India, secondarily upon the people of this country. The British are politically a strange race. At first sight they appear to be without imagination and without any clear conception of either the means or the ends of human Government. But they have moments of intense political vision which they immediately proceed to embody in what—again at first sight—appear to be the most hopelessly complicated, illogical, and unworkable systems of Government. We have seen this process at work in our time in South Africa; we can see it beginning again in India and in this Report. The vision is there—"our faith," the Report calls it—of 300,000,000 Indians managing their own affairs in their own way within the British Empire. They are embodied in practical proposals which only an Englishman would think of, for they offend against every conceivable rule of political wisdom and logic. No Frenchman and no German would look at them. But, with goodwill and with honesty of purpose, they will work.

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