

**The Honourable Mr. A. C. Chatterjee:** I presume the Honourable Member is referring to the leave rules which the Retrenchment Committee on page 255 of their Report considered unsuitable to the conditions of industrial labour. The question is being examined, but no proposals have yet been framed.

#### QUARTERS FOR PRESS EMPLOYEES.

882. **\*Haji Wajihuddin:** (a) Is it a fact that when a quarter allotted to a press employé is shared by another press employé owing to separate accommodation not being available full rent is recovered from both? If so, why and under what rules?

(b) Is it a fact that a large number of Secretariat staff share quarters and chum and mess together and that rent is deducted only from the man to whom the quarter is allotted? If so, why is a differential treatment accorded to the press employés?

**The Honourable Mr. A. C. Chatterjee:** (a) No. Press employés in Delhi pay rent subject to a maximum of 5 per cent. of salary. When this concession was sanctioned it was stipulated that if two or more press employés occupied the same accommodation the rent recoverable would be 5 per cent. of salary from each person, up to a limit of the assessed rent of the quarters.

(b) Government are not aware that a large number of the Secretariat staff share quarters. In their case the assessed rent is recovered from the person to whom the quarter is allotted. The stipulation referred to in the first part of my answer was not applied to them, as the concession rate of rent was not so applied.

#### COST OF THE SIMLA SESSION OF THE INDIAN LEGISLATURE IN 1923.

**Mr. Darcy Lindsay** (Bengal: European): Sir, I have given private notice of a question which, with your permission, I will put to the Honourable the Finance Member. Has the attention of Government been drawn to the statements appearing in the press to the effect that the Honourable Dr. Mian Sir Muhammad Shafi stated in the Council of State that the cost of a Simla session of four weeks' duration amounted to Rs. 1,28,00,000, of which 99 lakhs goes to the Assembly and 29 lakhs to the Council of State. What is the correct figure?

**The Honourable Sir Basil Blackett** (Finance Member): I am glad to have an opportunity of correcting an arithmetical error that has crept into the press. The statement that was made by the Honourable the Law Member in another place was that the cost of the Simla session of 1923, which lasted approximately four weeks, was Rs. 1,28,000. That has been copied in the press as Rs. 1,28,00,000.

#### PERSONAL POWER OF THE GOVERNOR GENERAL.

**Mr. K. C. Neogy** (Dacca Division: Non-Muhammadian Rural): Sir, with your permission, I will put a question of which I have given private notice.

(a) With reference to the answer given, on Monday the 17th March 1924, by the Honourable Sir Henry Moncrieff Smith, to my supplementary question regarding Rule 36A of the Indian Legislative Rules, will

the Honourable Member refer to the following statement made by the Honourable Sir Malcolm Hailey, in the Legislative Assembly on the 26th January 1922:

"It is not the function of the Governor General in Council to make recommendations to the Governor General, in regard to the exercise of his personal power, nor can they in any way seek to sway his decision"—(*vide* Legislative Assembly Debates, 26th January 1922, page 1968)?

(b) Will the Honourable Member be pleased to state whether, in view of the above statement made by the Honourable Sir Malcolm Hailey, an exception has been made in Legislative Rule 36A, in so far as it contemplates the Governor General being moved by the Governor General in Council, in regard to the exercise of his personal power under section 67B of the Government of India Act?

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): The intention of Rule 36A merely is to afford to the Governor General an opportunity for deciding whether he will exercise his power of recommendation under section 67B, and I quite admit that it would have been better had the rule been so worded. I must congratulate the Honourable Member on his detection of this somewhat unhappily worded phrase. I must also congratulate him on his excellent memory. There is no intention to depart from the principle laid down in the statement of the Honourable Sir Malcolm Hailey to which Mr. Neogy has referred. He may rest assured that the Governor General in Council cannot, will not, and in fact, dare not, attempt to control or sway the Governor General's discretion as to the exercise of his personal statutory powers?

**Mr. A. Rangaswami Iyengar** (Tanjore *cum* Trichinopoly: Non-Muhamadan Rural): May I ask, Sir, if it is open to the Governor General in Council to afford His Excellency the Governor General an opportunity of considering whether he shall exercise these statutory powers under section 67B, whether it will not be open to Members of this House also to move the Governor General in Council to afford in similar circumstances an opportunity to the Governor General to consider questions of certification and to consider the opinion of this House on such questions of certification?

**Sir Henry Moncrieff Smith**: I am not quite sure whether I understand the Honourable Member's question, Sir.

**Mr. A. Rangaswami Iyengar**: I will put it categorically. I understood Sir Henry Moncrieff Smith to mean that this rule is only intended to afford the Governor General an opportunity of exercising his mind on the question whether he should exercise the powers under section 67B of the Government of India Act. If it is open to the Governor General in Council to do that in respect of the power vested in him, I ask whether it is not open to the House here to move the Governor General in Council so to give the Governor General the opportunity which this rule says the Governor General in Council is entitled to afford to His Excellency the Governor General. In other words, whether we in the Assembly can move the Governor General to take the action suggested.

**Sir Henry Moncrieff Smith**: The rule, as it stands, Sir, deals with a Government Bill. But I should imagine that, if any Member of this House dealing with a private Bill wished to approach the Governor General and

[Sir Henry Moncrieff Smith.]

ask him to consider whether he would not exercise his powers of recommendation in respect of that private Bill, there would be nothing to prevent the Honourable Member from so doing.

**Mr. A. Rangaswami Iyengar:** I ask, Sir, whether it is open to this House to ask the Governor General to refrain from exercising the power. The question is, if he is to be afforded the opportunity of considering whether he should exercise the power or not, whether this House also may not move the Governor General in Council to ask the Governor General to refrain from exercising the power.

**The Honourable Sir Malcolm Hailey** (Home Member): Is the Honourable Member asking for an interpretation of any of our Rules or Standing Orders? They are as open to him as they are to us.

**Mr. A. Rangaswami Iyengar:** I am asking, Sir, in view of the words used in this rule, namely, "that when the Member in charge of a Government Bill intimates to the Chamber that it is proposed to re-introduce the Bill and to move the Governor General to make a recommendation in respect thereof", when the Governor General in Council has got the opportunity or the right to move the Governor General to take action under section 67B, whether it is not open to this House to move the Governor General in Council to ask that the Governor General should not take the action suggested.

**The Honourable Sir Malcolm Hailey:** The Honourable Member is taking advantage of words, which, my Honourable friend, Sir Henry Moncrieff Smith, has already stated, might have been somewhat differently phrased. If the Honourable Member desires that, in order to bring out the real meaning of the rule, it should be amended, we should be perfectly prepared to do so. The meaning is that the Governor General should have an opportunity of considering the case. If the rule is altered in that sense, then obviously the further implication which the Honourable Member wishes to attach to the rule would not arise and it would not carry the corollary that further powers should be given to this House.

**Mr. C. Duraiswami Aiyangar** (Madras ceded districts and Chittoor: Non-Muhammadan Rural): May I ask the Honourable the Home Member whether, in the contingency referred to by Mr. Iyengar, this Assembly cannot take steps under the Rules or Standing Orders relating to communications by means of an address to make a recommendation like that?

**The Honourable Sir Malcolm Hailey:** The interpretation of those rules, Sir, is with the Honourable the President and not with us.

**Diwan Bahadur M. Ramachandra Rao** (Godavari *cum* Kistna: Non-Muhammadan Rural): In view of the difficulties pointed out by Mr. Iyengar, may I ask whether the Honourable the Home Member will consent to have all the Rules referred to a committee of this House, though I understand that these Rules have to go before Parliament.

**Sir Henry Moncrieff Smith:** I explained the other day, Sir, that the rule-making power under section 129A or section 67 is a purely executive act. Moreover, section 129A itself, I think, makes that very clear.

(*Diwan Bahadur M. Ramachandra Rao*: "I do not dispute that at all.")  
It says:

"Rules shall be made by the Governor General in Council with the sanction of the Secretary of State in Council and shall not be subject to repeal or alteration by the Indian Legislature or by local Legislature."

I think that the enactment was so framed to make it perfectly clear that the making of rules is to be purely an executive act.

**Mr. A. Rangaswami Iyengar**: May I ask, Sir, if, notwithstanding the fact that this rule-making power is vested in the executive Government, with which, we have been told, this Council is not concerned, the making of these rules was as a matter of fact undertaken by a committee on which Indian opinion was represented and it was laid in draft before both Houses of Parliament and finally approved, or if, in respect of rules of such a far-reaching character as these, the whole thing has been done behind the back of this House and of Indian opinion and without giving Parliament or this Assembly an opportunity of expressing their views?

**Dr. H. S. Gour** (Central Provinces Hindi Divisions: Non-Muhammadan): May I also draw the attention of the Governor General in Council to the very rule referred to by Sir Henry Moncrieff Smith to the effect that the rules are to be made by the Governor General in Council?—in consequence of which, the Governor General in Council, being at least responsive to this House, though not at present responsible, it would have been wise for the Governor General in Council to have taken this House into confidence before formulating these rules, the legality of which is seriously in question in view of the provisions of section 67B which only provides that where either Chamber of the Indian Legislature refuses leave to introduce or fails to pass in a form recommended by the Governor General, then the Governor General may certify. It is only in that one short narrow contingency, that is where the Indian Legislature refuses leave to introduce or fails to pass in the manner laid down in the section, that the Governor General may certify. The rules now made leave a wider door open to the Governor General to exercise the power. It confers on the Governor General in Council a right of suspensory veto, as it were, to a provision of a Bill after its introduction which has not received the acceptance of this House. And I submit, in so far as it confers upon the Members of the Government the power to suspend the progress of the Bill till they have consulted the Governor General, the rules contravene the essential principle underlying section 67B of the Government of India Act.

**The Honourable Sir Malcolm Hailey**: Is the Honourable Member asking a question?

**Dr. H. S. Gour**: I simply wanted to know whether this fact has been adverted to by the Governor General in Council in framing the rules.

**Sir Henry Moncrieff Smith**: I am not quite sure what the Honourable Member's fact is: he expresses an opinion that the rules are *ultra vires*. As I explained the day before yesterday, the Governor General in Council is perfectly satisfied that these rules are not *ultra vires*. The Honourable Member seems to think that these rules are made under section 67B. They are not made under that section; they are made under

[Sir Henry Moncrieff Smith.]

section 67, which enables rules to be made for the conduct of business in both Chambers of the Indian Legislature. They do apply, practically all of them, to Bills dealt with by special procedure under section 67B. There is nothing whatever to prevent rules being made under section 67 to apply to any course of legislation in this Chamber or the other.

**Dr. H. S. Gour:** The question I asked the Honourable Member, Sir Henry Moncrieff Smith, was whether the rules made under the Government of India Act could be made so as to contravene the explicit provisions of a particular section, such as section 67B, which deals with one contingency and one contingency only, and whether, by the rules made under the general powers of section 129 of the Government of India Act, the narrow provisions of section 67B could be widened.

**Sir Henry Moncrieff Smith:** Does the Honourable Member ask whether it is open to make rules to contravene a provision of the Government of India Act? That, I understood, is his question, and, of course, the answer is, most certainly not. It is impossible to make rules that are repugnant to any provisions of that Act. If the rules are so made, they are to that extent void, as the Honourable Member will find by looking at his Government of India Act.

**Mr. O. Duraiswami Aiyangar:** May I suggest one or two things in this connection? In matters like these, when rules of considerable importance have to be framed instead of communicating these rules to the Honourable Members of this House by means of a notification in the Gazette, I think, Sir, it would be much better if His Excellency the Governor General chooses to communicate the same through the President to this House, and the Members of this House may be permitted on such an occasion to express their views upon the rules or communications so made by His Excellency the Governor General. I wish to state that in all matters of importance which are connected with the conduct of the business of this Assembly, whatever it may be, it will be better if His Excellency the Governor General sends such communications to this House direct through the President instead of making the Honourable Members of this House look into the Gazette for their information.

**Sir Henry Moncrieff Smith:** The method adopted for publishing these rules does not seem to have prevented the House from availing itself of opportunities to give their views at some length.

**Diwan Bahadur M. Ramachandra Rao:** May I know, Sir, when that opportunity arose? Is it after the rules have been framed by the Governor General in Council and laid before the Houses of Parliament or before? May I suggest, Sir, that there is nothing in section 129A to prevent the Governor General in Council, if they were so minded, to have appointed a Committee before these rules were submitted to the Secretary of State in Council?

**Sir Henry Moncrieff Smith:** There is nothing to prevent it, Sir, but such a thing has never been done.

**Diwan Bahadur M. Ramachandra Rao:** May I know, Sir, why it was not done? In view of the fact that these rules are to bind the House, may I know why such a course could not have been taken?

**Sir Henry Moncrieff Smith:** It binds the House no more than any other rule in the little blue book which the Honourable Member has in his hand.

**Dr. H. S. Gour:** The Honourable Member says that it has never been done. Had such rules been framed before this time?

**Sir Henry Moncrieff Smith:** The Honourable Member has had this little blue book in his hand for about three years. If he will look at it he will find that it contains a considerable number of rules. I am surprised that he was not aware of it till now.

**Mr. A. Rangaswami Iyengar:** Is it a fact that, when the rules were originally framed, there was a Committee which sat upon it here in this country, and that Indian opinion was represented on it?

**The Honourable Sir Malcolm Hailey:** There was what is known as the Reforms Advisory Committee, but, I am not sure how far they dealt with the Legislative rules. They dealt with a large number of subjects such as the Devolution Rules and the rules flowing from the Government of India Act generally. I cannot at the moment tax my memory as to whether they dealt with the Legislative rules or not. My recollection is that these rules were modelled with the necessary modifications, on the rules of the old Imperial Legislative Council.

**Mr. A. Rangaswami Iyengar:** May I say, Sir, that so far as my memory goes, I have seen these draft rules in the hands of the non-official Members of the Advisory Committee that was set up to discuss them, and the discussion also is one of the many things we had before us. We discussed the rules when they were made.

**The Honourable Sir Malcolm Hailey:** I did not know that the matters referred to the Advisory Committee were communicated to others also; but I will ascertain the exact facts as to what questions were referred to them.

**Diwan Bahadur M. Ramachandra Rao:** I may say that I was a member of an Advisory Committee in Madras and that the rules regarding business were discussed by that Advisory Committee.

**Mr. Chaman Lal** (West Punjab: Non-Muhammadan): Instead of raising a hornet's nest round the heads of the Executive by introducing these amendments, would it not have been better to have dissolved this Chamber?

**Mr. Devaki Prasad Sinha** (Chota Nagpur Division: Non-Muhammadan): With reference to section 67 of the Act which says that the rules regarding the course of business are to be framed in this country, are Government satisfied that these rules in question are only rules regulating the course of procedure and not infringing on the rights of the Legislature under section 65 of the Government of India Act?

**Sir Henry Moncrieff Smith:** We are quite satisfied, Sir, and so is the Secretary of State.