IN THE SUPREME COURT OF INDIA

Civil Appeal No. 4056-4064 of 1999

IN THE MATTER OF-

Mineral Area Development Authority …Petitioner

VERSUS

Steel Authority of India Ltd. …Respondent

VOL I (E)

ADDITIONAL SUBMISSIONS BY MR. S. NIRANJAN REDDY ON BEHALF OF STATE OF ANDHRA PRADESH

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I. MINERALS DO NOT AUTOMATICALLY VEST IN THE STATE

1. Ordinarily, the right to sub-soil minerals vests in the title holder of the land. Only when the land rights are limited in their original grant or tenure, mineral rights vest in the State.

2. This Hon'ble Court in ***Thressiamma Jacob v. Dept. of Mining & Geology***, (2013) 9 SCC 725 specifically held as under [**Vol V(A), Pg. 831 @ Pg. 856-859**]:

> *"55. The Mines and Minerals Act is an enactment made by Parliament to regulate the mining activities in this country.* ***The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights.*** *On the other hand, various enactments made by Parliament such as the Coking Coal Mines (Nationalisation) Act, 1972 and the Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under Sections 4 and 7 respectively providing for acquisition of the mines and rights in or over the land from which coal is obtainable.*
>
> *56. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium, the Atomic Energy Act, 1962 only provides under Section 5 for prohibition or regulation of mining activity in such mineral. Under Section 10 of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.*

58. For the abovementioned reasons, ***we are of the opinion that there is nothing in the law which declares that all mineral wealth/subsoil rights vest in the State, on the other hand, the ownership of subsoil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process****."*

[Emphasis supplied]

3. Such rights of respective land owners over their sub-soil minerals have also been legislatively recognized throughout.

(i) ***Indian Mines Act, 1901*** defines owner at Section 3 (e) as :

"owner," when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of the part thereof, and does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine, but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability" [**Vol IV(K), Pg. 146 @ Pg. 147**]

[Emphasis supplied]

(ii) ***The Indian Mines Act, 1923*** identically defines owner at Section 3(g).

(iii) ***The Mines and Minerals (Regulation and Development) Act, 1948*** (**"*MMRD, 1948*"**) regulates mines belonging to all persons including private persons who are enfolded under the expression Lessor/Licensor.

(iv) ***The Mineral Concession Rules, 1949*** promulgated under the ***MMRD Act, 1948*** specifically envision the granting of mineral concessions by private persons under Chapter V. Specifically, Rules 46 and 47 (iv) provide for payment of royalty to private persons. [**Vol IV (I), Pg. 2 @ Pg. 19, 20**]

(v) ***The Mines and Minerals (Development and Regulation) Act, 1957*** ("***MMDR, 1957***"**)** separately demarcates lands in which minerals vest in the ***government*** and private persons. The ***Mineral Concession Rules, 1960*** passed under this Act make separate provisions for such different classes. **Rule 53** illustratively provides as follows [**Vol IV, Pg. 1586 @ 1610**]:

"53. Chapters III and IV to apply to prospecting licences and mining leases in respect of minerals which vest partly in Government and partly in private persons:- The provisions of chapters III and IV shall apply in relation to the grant of prospecting licences and mining leases in respect of minerals which vest partly in the Government and partly in a private person as they apply in relation to the grant of prospecting licences and mining leases in respect of minerals which vest

exclusively in the Government:

Provided that the dead rent and royalty payable in respect of mineral which partly vest in the Government and partly in a private person shall be shared by the Government and by that person in proportion to the shares they have in the minerals."

4. Therefore, the contentions of the opponents of the state's power to tax that:

(i) *All minerals vest in the state;*

(ii) *Royalty inevitably flows to the state for every exploration of minerals equating it to an exaction akin to tax; and*

(iii) *As minerals do not vest in individuals, mineral rights/minerals themselves cannot be a measure for levying tax under Entry 49/50 of List II of Seventh Schedule*

are without merit and liable to be rejected.

II. ROYALTY – ITS EXACT NATURE

Conceptually

5. The term royalty originated from the fact that for centuries gold and silver mines in Great Britain were the property of the Crown. Such "royal" metals could be mined only if a payment ("royalty") were made to the Crown.[1]

6. Royalty, which is legally understood as a share paid to the "owner" of minerals, is rooted in the idea that an owner needs to be compensated for the depletion of his mineral resources which are finite. This is what fundamentally distinguishes royalty from the concept of rent. For instance, when land is given for agriculture it is not deteriorated by working but when land is given for mining, there is a deterioration every time it is mined. Therefore, royalty finds justification in compensating the owner for the depletion of mine by each quantity of mineral removed. [2]

7. In the **House of Lords debate in 1945** on administration of mines in British Colonies, the *Parliamentary Under-Secretary of State* stated as under:

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[1] *Mineral Royalties, Indian Bureau of Mines, Government of India Report, January 2011* [**Vol IV, Pg 4109 @ Pg. 4117**]

[2] *Mining Royalties and their Effect on the Iron and Coal Trades by WR Sorley, Journal of Royal Statistical Society, Vol 52, No. 1 - Pg. 66, 77*

"The normal method by which Colonial Governments obtain revenue from mines is either by means of a royalty on the mineral worked or by export duties. ***Royalty is a very much misunderstood term. Strictly speaking, it is not taxation or a rent, but purchase money or compensation for the removal of a capital asset, and the payment of royalty does not therefore relieve a company from its liability to general taxation****.* *Where minerals are privately owned and the royalty therefore goes into private hands, Colonial Governments have sometimes derived revenue by means of an ex-port duty, especially where more general forms of direct taxation are not in operation."*

[Emphasis supplied]

Copy of the relevant debate extracts are enclosed as **Annexure P1.**

Indian Legal Framework

8. Royalty was not statutorily regulated or controlled until the ***MMRD Act, 1948*** came to be passed which at **Section 6 (2) (i)** specified as under [**Vol IV, Pg. 891 @ Pg. 894**]:

"6. Power to make rules as respect to mineral development:

1..xxx

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected"

9. Pursuant to the power under the ***MMRD Act, 1948*** the Central Government enacted the ***Mineral Concession Rules, 1949*** and fixed the rate of royalty for specified minerals under Schedule 1. Rule 41 of these Rules is similarly worded to Section 9 of the ***MMDR Act, 1957*** [3] **[VOL IV (I), Pg. 2 @ 16, 25] :**

"41. Conditions: (1) Every mining lease shall include the following conditions: -

(i) The lessee shall pay royalty on minerals dispatched from the leased area [in accordance with Schedule I] to the Rules:

Provided that such rates shall be liable to be revised with effect from the beginning of the year 1933 and thereafter once in every 10 years:

Provided further that, in the case of a lease executed after the coming into force of these Rules, the lessee shall not be required to pay, during the currency of his lease, a rate of royalty exceeding ____ times the original rate specified in his lease.

[3] Rules 23, 41, 46 and 47 (iv) of the *Mineral Concession Rules, 1949* deal with royalty.

(iii) The lessee shall also pay, for every year, except the first year of the lease, such yearly dead rent within the limits specified in the Third Schedule to these Rules as may be fixed by the State Government in the lease; and if the lease permits the working of more than one mineral in the same area, the state Government may charge separate deal rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead-rent or royalty in respect of each mineral, whichever be higher in amount, but not both."

10. The entire Parliamentary Debate of the ***MMDR Act, 1957*** only centred around the concerns about the depletion of state's authority to specify the royalty. The debate did not even contemplate that such power of fixing royalty under Section 9 encroaches into the state's power to tax under Entry 50, List II including by reference to Parliament's power to impose a limitation. Importantly, the debate recognized that mines in large parts are owned by private players. [**Vol IV (K), Pg. 921 @ 924, 926**]

III. ROYALTY DIFFERENT FROM TAX

11. Royalty compensates the mineral owner for transfer of rights of the minerals under a mining lease. It is therefore akin to a consideration for parting with goods/minerals.

12. Royalty is in the realm of consideration and compensation to the land owner having mineral rights (this may incidentally include State Government). Royalty is thus a payment analogous to a contractual consideration. It cannot be treated as as an exaction or levy because it is not similar to a consideration or compensation for a loss suffered.

13. As the land owner loses the value of minerals on account of mining lease, ordinarily such mineral owners can contractually impose his own terms for transferring such rights. In the regulatory sphere, under Section 9 the Central Government caps such consideration called royalty. Royalty is thus a statutory regulation of the consideration that can be contractually collected.

14. Therefore, royalty is not a levy in the nature of tax. It does not have any characteristic of a tax. It is rather compensatory to the person whose minerals are dispatched and consumed by another under a mining lease.

IV. MINING – REGULATION AND TAXATION ARE DISTINCT CONCEPTS

15. The aspect of regulation of mines was always treated differently from the concept of power to tax.

16. The ***Government of India Act, 1935***, therefore provided for taxing of mineral rights as a separate entry distinct from the regulation of mines and mineral development. The relevant entries were as under [**Vol IV (A), Pg. 2-6**]:

> ***List I. Federal Legislative List***
>
> ***36.*** *Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal Law to be expedient in the public interest.*
>
> ***List II. Provincial Legislative List***
>
> ***23.*** *Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under federal control.*
>
> ***44.*** *Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.*
>
> [Emphasis supplied]

17. It was originally recommended by the *Joint Parliamentary Committee on Indian Constitutional Law Reform* that taxes on mineral rights must be placed in the Federal List by suggesting entries as follows [**Vol IV (Q), Pg. 2 @ 177, 180**]:

> ***List I (Federal)***
>
> ***51.*** *Taxes on mineral rights and on personal capital other than land.*
>
> ***List II (Provincial)***
>
> ***36.*** *Mines and the development of mineral resources in the Province.*

18. However, eventually under the *Government of India Act, 1935* the power to tax minerals was left with the Provinces.

19. This followed a debate in the *House of Commons* on 13th May, 1935 where some members had expressly raised concerns about the Federal Government's ability to regulate properly given the state's power to tax which could be used discriminatively/excessively. The debate, even while stressing the necessity of uniform central regulation and despite concerns of states using their taxing power excessively, nevertheless retained the power with the state. [**Vol V(Q), Pg. 1475 @ 1480-1481**]

Federal and Provincial Lists

20. The division of fields between the Centre and Provinces finds its traces to the ***British North America Act, 1867*** in Canada.

21. The Privy Council in ***Bank of Toronto v. Lambe (1955 AC 241) ("Bank of Toronto")*** dealt with a Canadian case raising a similar issue pertaining to the Parliament's power to regulate and whether such power denuded the Provinces' right to tax in the context of Sections 91 and 92 of the ***British North America Act, 1867*** providing as follows:

> ***91. Powers of the Parliament***
>
> *2. Regulation of trade and commerce*
>
> *3.The raising of money by any mode or system of taxation*
>
> *15. Banking, incorporation of banks and issue of paper money*
>
> ***92. Exclusive Powers of Provincial Legislatures***
>
> 2**.** *Direct taxation within the province in order to the raising of a revenue for provincial purposes.*

22. The relevant paragraphs of ***Bank of Toronto*** setting out the issue for consideration are extracted hereunder:

> *4. The bank resists payment of the tax in question on the ground that the Quebec Legislature had no power to pass the statute which imposes it.*
>
> *5.The principal grounds on which the Superior Court rested its judgment were as follows: — That the tax is an indirect one; that it is not imposed within the limits of the province; **that the Parliament has exclusive power to regulate banks**; that the Provincial Legislature can tax only that which exists by their authority or is introduced by their permission; **and that if the power to tax such banks as this exists, they may be crushed out by it, and so the power of the Parliament to create them may be nullified**....*
>
> *6. To ascertain whether or not the tax is lawfully imposed, it will be best to follow the method of inquiry adopted in other cases. **First, does it fall within the description of taxation** allowed by class 2 of sec. 92 of the Federation Act, viz., "Direct taxation within the province in order to the raising of revenue for provincial purposes?" **Secondly, if it does, are we compelled by anything in sec. 91 or in the other parts of the Act so to cut down the full meaning of the words of sec. 92 that they shall not cover this tax?***

23. This was answered by the Privy Council as follows:

> *15. **It has been earnestly contended that the taxation of banks would unduly cut down the powers of the Parliament in relation to matters falling within class 2, viz., the regulation of trade and commerce; and within class 15, viz., banking, and the incorporation of banks. Their Lordships think that this contention gives far too wide***

an extent to the classes in question. They cannot see how the power of making banks contribute to the public objects of the provinces where they carry on business can interfere at all with the power of making laws on the subject of banking, or with the power of incorporating banks. The words "regulation of trade and commerce" are indeed very wide, and in Severn's Case, 2 Sup. Court of Canada, 70, it was the view of the Supreme Court that they operated to invalidate the license duty which was there in question. *But since that case was decided the question has been more completely sifted before the Committee in Parsons' Case, 7 App. Cas., 96,* ***and it was found absolutely necessary that the literal meaning of the words should be restricted, in order to afford scope for powers which are given exclusively to the Provincial Legislatures****. It was there thrown out that the power of regulation given to the Parliament meant some general or interprovincial regulations.* ***No further attempt to define the subject need now be made, because their Lordships are clear that if they were to hold that this power of regulation prohibited any provincial taxation on the persons or things regulated, so far from restricting the expressions, as was found necessary in Parsons' Case, 7 App. Cas., 96, they would be straining them to their widest conceivable extent.***

16. ***Then it is suggested that the Legislature may lay on taxes so heavy as to crush a bank out of existence, and so to nullify the power of Parliament to erect banks. But their Lordships cannot conceive that when the Imperial Parliament conferred wide powers of local self-government on great countries such as Quebec, it intended to limit them on the speculation that they would be used in an injurious manner.*** *People who are trusted with the great power of making laws for property and civil rights might well be trusted to levy taxes. There are obvious reasons for confining their power to direct taxes and licenses, because the power of indirect taxation would be felt all over the Dominion.* ***But whatever power falls within the legitimate meaning of classes 2 and 9, is, in their Lordships' judgment, what the Imperial Parliament intended to give; and to place a limit on it because the power may be used unwisely, as all powers may, would be an error, and would lead to insuperable difficulties, in the construction of the Federation Act.***

17….. ***If they find that on the due construction of the Act a legislative power falls within sec. 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or" may limit the range which otherwise would be open to the Dominion Parliament."***

[Emphasis supplied]

A copy of the Privy Council judgment in *Bank of Toronto* (supra) is filed as **Annexure P2.**

24. The Canadian precedents on the distribution of powers between the Federal Government and Provinces have been usefully referred to in ***Federation of Hotel and Restaurant Association of India* v. *Union of India,*** (1989) 3 SCC 634 [**Vol V, Pg. 1073 @ 1091-**

1094 and Pg. 673] and ***Jayant Verma* v. *Union of India***, *(2018) 4 SCC 743* while deliberating overarching constitutional doctrines like the doctrine of pith and substance, incidental encroachment and Aspect theory.

V. TAXATION PER SE - NOT AN IMPEDIMENT FOR DEVELOPMENT

25. The contention that any taxation is antithetic to development and would therefore impede development as intended by the Parliament under the *MMDR Act, 1957* is unsound.

26. This principle was unanimously reiterated by a bench of 9 Judges in ***Jindal Stainless Ltd. v. State of Haryana,* (2017) 12 SCC 1** by Hon'ble Justice TS Thakur @ ***Para 127***, by Hon'ble Justice SK Singh ***@ Para 162***; by Hon'ble Justice Bhanumathi ***@ Para 269 and 333;*** by Hon'ble Justice Chandrachud ***@ Para. 631*** **[Vol V(G), Pg. 457 @ Pg. 660, 674, 727, 753 and 885]**

VI. TAX ON LAND INDEPENDENT OF ROYALTY ON MINERALS OR MINERAL RIGHTS

27. ***MMDR Act, 1957*** recognizes three categories of mineral owners:

(i) *State Government*

(ii) *Private Persons*

(iii) *Special category of persons who only own surface rights without having rights on sub-soil minerals*

28. **Rule 72** of the ***Mineral Concession Rules, 1960*** recognizes the 3rd category above by providing as under [**Vol IV, Pg. 1586 @ 1610**]:

> *"72. Payment of compensation to owner of surface rights etc:*
>
> *(1) The holder of a reconnaissance permit or prospecting licence or mining lease shall be liable to pay to the occupier of the surface of the land over which he holds the reconnaissance permit or prospecting licence or mining lease, as the case may be, such annual compensation as may be determined by an officer appointed by the State Government by notification in this behalf in the manner provided in subrules (2) to (4).*
>
> *(2) In the case of agricultural land, the amount of annual compensation shall be worked out on the basis of the average annual net income from the cultivation of similar land for the previous three years.*
>
> *(3) In the case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of average annual letting value of similar land for the previous three years.*

(4) The annual compensation referred to in sub-rule (1) shall be payable on or before such date as may be specified by the State Government in this behalf."

29. In this dispensation a surface rights holder who was subjected to tax on land prior to the grant of mining lease continues to benefit from the existence of surface rights in land but would be excluded from the ambit of state's power to tax under Entry 49, List II notwithstanding such surface rights continuing to be recognized and rewarded.

30. State's right to levy tax on land is distinct and independent from its rights under Entry 50, List II. Land has a permanent continuing character unlike tax on mineral rights which taxing event only commences on grant of a mining lease and ends with either the completion/determination of mining lease or exhaustion of the mineral.

31. Land in its permanent character exists before and after such contingencies and at all times remains subject to the state's power to tax under Entry 49, List II.

32. The power to tax under Entry 49, List II is existent prior to the grant of mining lease and does not cease by the mere incidence of grant of mining lease. It is pertinent to note that the mining lease is of "a land". Land therefore is present in a continuem and the power of the state to levy tax on land cannot be said to recede into a hiatus only during the currency of a mining lease. This would read a limitation into Entry 49, List II which is otherwise not constitutionally provided.

ANNEXURE 1

MINES IN BRITISH COLONIES.

HL Deb 15 May 1945 vol 136 cc184-219

3.22 p.m.

LORD AMMON rose to call attention to the control and administration of mines in the British Colonies; and to move for Papers. The noble Lord said: My Lords, it is perhaps something of an anticlimax to move the Motion in my name on the Paper, yet I think if you look at it objectively it is very well, after having expressed our gratitude and loyalty to the Throne, that we should turn to consider the larger realm over which the King exercises sway and discuss some of those very difficult and complex problems that flow naturally out of the war and are its aftermath. I think your Lordships will agree with me when I express our pleasure at the fact that the noble Duke who is to reply to this debate has sufficiently recovered from his accident to be able to take his seat on the Front Bench this afternoon.

On the last occasion that I ventured to raise matters concerning our Colonial Empire in this House I spoke in somewhat general terms. To-day I propose to confine myself more or less to one aspect of our responsibilities to our Colonial brethren and particularly to the stewardship of this House in that connexion. The war leaves indelible impressions and not the least will be those left upon our Colonial subjects, not only in regard to their treatment by their fellow-subjects within the British Empire who may be of a different colour to themselves but also in regard to the experiences they have passed through during the war years. One of those impressions was well put in the last issue of the Sunday Times which called attention to the fact that the war had revealed that we had failed to realize the potential source of strength which is resident in our Colonies and that we had never fully used the material resources which are at our disposal there.

I propose first of all to call attention to a matter that has come to my notice since I first put this Motion on the Paper. I have received a copy of the Nigerian Mineral Ordinance which has been recently issued. I should like, if I may, to express the pleasure which many of its provisions have given me. They have gone a very long way to meet some of the difficulties of the native populations and will, I hope, strengthen the bonds of kinship or fellowship which bind them to the central authority. Some of the provisions are so far-reaching that they recall to my mind a complaint that I made here on a previous occasion. I then said that when we had done things worth while we failed to advertise them or to take steps to get them sufficiently widely known, not only to enable the Government to get the full credit for them but to help to combat the unfavourable criticisms of the government of the Empire by people who are not fully aware of how much has been done and how far we have advanced from old-time conceptions of the relationship between the Mother Country and other parts of the Empire.

One of the things that stands out in this new Ordinance concerning Nigeria is that the ownership of the minerals is vested in the Government itself. This is a matter of tremendous importance. It places the Government and the people in a very much more favourable position than normally obtains in cases of private ownership and monopoly which we discussed a little time ago. Another very important matter is that it is incumbent upon the people to whom the mineral rights are leased that they should carry out a reasonable amount of restoration of the top soil and the removal of dumps in worked concessions. That sounds very mundane but it is tremendously important. We have heard during discussions in this House of the great amount of harm and wrong done to countries by soil erosion and by the other evils that arise when land has been left in a condition where it becomes desert and useless simply because no responsibility has been imposed upon owners to make good the disturbance of the soil and remedy the harm that ensues if it is not put into a condition in which it can be used for cultivation later on.

The other point to which I would direct your Lordship's attention in this Ordinance is that the lease cannot be for a longer period than twenty-one years at a time. That prevents absolute monopoly of the land in a country. It does not mean that any particular industry cannot be carried on for longer than twenty-one years, but it does mean that the people who have been granted the lease have at the end of that period to give an account of their stewardship and to

show justification for their having been given the power and authority to use the land leased to them in a way that will be of advantage to the whole community. Everyone who has taken an interest in this matter for some years will, I am sure, rejoice at that advance and will agree that it is right and is something that may serve as a pattern for future developments elsewhere in the days to come.

But having said that, one would not be doing one's duty if one did not point out that there are possibilities of improvement even in this admirable Act. I suggest therefore that the noble Duke might give his attention to Clauses 85 to 96, which provide for compensation for tributers in case of accident due to negligence. There is no provision for them to come under the Workmen's Compensation Act as do other workers. It might be worth while to ascertain why these people who are known as tributers are put in an inferior position to other workers who are compensated when they meet with an accident in the course of their work. I think, too, that in the training of people required to carry out work in the mines and elsewhere, there should be some obligation not to discriminate against Africans. There should be some training facilities provided for the African in order that he may take greater responsibility instead of being confined to the lowest conditions and terms of work. We have a responsibility for seeing that these people are not kept always in the position of being hewers of wood and drawers of water. They should be trained so that they may be able to fill positions of responsibility and authority in their own countries, and every opportunity should be given them in that respect.

There is another point which is not made quite clear in the Ordinance to which I have referred. Some provision should be made that persistent breaches of the labour laws should be a ground for the termination of a lease. Leases can run, and do run, for twenty-one years. At the end of that time, if the owner has not acquitted himself in a way that is thought right and proper, he will not get a further lease. I suggest that if owners fail in their duty towards their employees, if they neglect essential welfare work or neglect to provide hospitals, ambulances and proper housing accommodation, it might well be considered whether that should not be ground for terminating a lease and passing it on to people who would be inclined to exercise their stewardship to greater advantage. There is only one other matter in the Ordinance to which I wish to call attention. In Nigeria royalties are not mentioned in the leases but are presented separately by the Governor. This means that all mines must pay the same royalty. It does not need any argument to show that mines vary considerably in value. There should be a possibility on the renewal of a lease to change the royalty should a mine prove poor. I suggest that the noble Duke might give some thought to improving what is a really admirable Act and making it even better.

Now I want to turn to a particular aspect of mining in the Colonies. Because of the exigencies of the war one is confined mostly to West Africa, since we have been cut off from contact with other parts of the Empire where mining is carried on or they have been in possession of the enemy. I feel—and I think your Lordships will agree—that there will be a great need in the future to justify to the world the continuance of our Colonial Empire. None of us can be oblivious of the criticisms that often appear in the Press of other countries of the way in which we administer our Colonies and the false impression that sometimes prevails as to what we get out of them. We have to give substantial proof of our stewardship in the economic, cultural, social and moral standard of the indigenous people. That is laid upon us as our first responsibility. Nowhere is there greater room for improvement than in the conditions prevailing in the mining industry. In many Colonies the mines are one of the few rich assets. In the past these assets have been handed over to private concerns whose chief object was to make profits for their shareholders. I am prepared to give them all the credit they claim for having done much to improve the conditions of the natives, but ultimately native people are deprived of their natural wealth. While not denying that it may be true that over a period of years profits may not have been high, yet in the minds of the Colonial people there is the inescapable fact that millions of pounds worth of gold, copper and diamonds have been exported from their country. There is a big permanent draining of wealth from the territories in the way of profits, royalties and dividends which ought to be put back for economic and social development.

We shall have to give attention and thought to this matter, because more and more criticism will grow not only among people in other countries but in the Colonies themselves as the people in those Colonies come more into touch with other nations. It may be that millions of their fellows will return to those Colonies to tell of different conditions of life and conduct. That will raise real problems for us. In the debate which took place in your Lordships' House on March 21, when we discussed monopolies and cartels, the noble Lord, Lord Geddes, who I regret to say is too unwell

to be present to-day, made what I thought was a very unwarranted attack on my noble friend Lord Nathan. He told your Lordships of the conditions of people working in certain mines in Northern Rhodesia and he claimed that his company had done a very great deal to improve social and economic conditions. He pointed out that so far as white people were concerned they were getting the highest wages in the world, but he made no such claim in the case of the coloured workers, although he did claim that they were treated in other respects very well. I am not disposed to quarrel with that at all. I admit that a good deal that the noble Lord stated is true, but nevertheless we have to notice that the wage paid to the white worker is from forty to fifty times as great as that pa id to the coloured worker.

What is worse is that the coloured worker is subject to the colour bar, and it is not possible for him to undertake the more advanced and skilled work. Nothing was said about that by the noble Lord, but it is I think a matter that calls for serious attention by the British Parliament. We must concern ourselves surely with the matter of personality and with the raising of human dignity. If our stewardship means anything it must surely mean that that should be our first concern. In this connexion I have had brought to my attention a statement issued by the Conference of Missionary Societies in Great Britain and Ireland. Recently this problem came under the particular consideration of that conference and the executive committee of what is known as the British Council of Churches—an organization representing I believe all the Protestant Churches in England and Ireland—associates itself with this statement. They point out the very great dangers and the great wrong done to indigenous people from the moral and spiritual point of view by the exercise of the colour bar.

I venture to quote from the statement: "It is confident that the people of this country, when alive to the facts, will demand fair play for every man whatever his colour, by which policy alone the spirit of true partnership in Colonial affairs can develop. It would view with grave misgiving any changes in the existing political status of African territories at present under British control which would impair or limit in any way the power of the British Government to give the fullest effect to this policy, or subject the native population to policies based on different principles." It is quite obvious that this conference was very concerned about certain movements that are taking place in one of our overseas Dominions with regard to the coloured population, which is going to raise very great differences in Africa in the near future. I am one of those who think that both Africa and India are going to cause very great trouble for this country and Empire in the days that lie ahead. It is well therefore that we should begin to give them very serious attention.

In this particular connexion it is worth observing that the Episcopal Synod of the Church of the Province of South Africa issued a statement saying: "We affirm that the effect of colour prejudice is cruel, wasteful and dangerous; cruel, for it deprives those who are its victims of the opportunity of making full use of their capacities and talents, and so causes frustration and despair; wasteful, for it deprives the community of the skill of many which would otherwise be used for the benefit of all; dangerous, for unjust treatment meted out by one section of the community to another creates fierce and ever-increasing resentment, with results that no one can foresee." Now resolutions of that description coming from that quarter cannot be ignored. While we may plan and pray and work in the hope that war will never again break out, at the same time we have got to remember that while things like that obtain potentialities for trouble are always in existence. When we take into consideration the fact that the white peoples of this earth are tremendously outnumbered by the coloured peoples—and this applies especially to the British Empire—we can see that there are potentialities and possibilities of danger there which cannot lightly be ignored.

Now may I, for a moment or two, touch upon one or two more detailed aspects of the subject? Some time ago—it was in 1938 to be exact—I visited some tin mines in Nigeria. I do not think that I have ever seen anything more dreadful or anything more degrading than for human beings to have to live under conditions such as were to be found at those places. Provision ought to be made in ample measure to ensure that, at any rate, the people working in those mines should have decent welfare conditions, decent working conditions, decent housing conditions, and that, generally speaking, their natural wants are properly provided for. We have to remember that the people who work in these mines are backward and primitive people, who have been drawn from their homes in the neighbourhood and are now working in very deplorable conditions. There arise from this tremendous social problems. When these people have finished their employment and are free to go back to their native communities, these problems increase. One of the chief difficulties arises because there is no sort of co-ordination between mining development and the needs of the communities living in the surrounding country. Workers are torn from their villages to work elsewhere, and after a

time are sent back to their homes. This causes tremendous social and physiological upheavals. These facts alone show the need for strict Government control and supervision of mining operations in Colonial territories. We cannot afford any longer to leave private owners to do as they like with the mining in these countries. They have got to be under the supervision, control and direction of the Government. There must be proper systems of inspection and so forth.

Too little attention is paid to the subject of welfare by the private mining firms and iron concerns in Sierra Leone. Often in the tin mines, arrangements for dealing with sickness, disease and accidents hardly exist, and but for the Government what little is done would not have been done. Hospitals may be situated as much as a score of miles away; the field emergency stations are primitive in the extreme; and there is no ambulance. The treatment of illness and disease is distressing. Women near childbirth work all day carrying up steep slopes great quantities of earth, as much as from 70 lb. to 90 lb. Little children are brought in to work in and about the mines; the food is miserably poor; and the pay is disgustingly low. At the wealthy ironfields in Sierra Leone conditions relating to feeding, housing and welfare need complete overhaul. I would like to ask the noble Duke who is going to reply, is there any control over the social problems created by attracting these people hundreds of miles to their work? What wretched village and town life near the mines are these workers reduced to, and what happens in the places whence they come? Matters like these, I suggest, form the foundation of very serious social problems indeed. The manner in which employment is carried out breaks up the whole tribal system and makes people homeless wanderers. It causes great distress and trouble where there need not necessarily be any.

In the current issue of the Bulletin of the National Association for the Prevention of Tuberculosis, there appears a letter from a West African from which I will venture to quote. The writer, I rather think, is a medical student, and, if that is so, he is writing about matters relating to his own profession. I may say, in passing, that I myself went through dozens and dozens of hospitals in West Africa and I noted that they were crowded with patients suffering from tuberculosis and V.D.—both things which it is incumbent upon us to do all in our power to remedy. The writer of this letter states: "With overwork, strain and the other accompaniments of war there has been a huge increase in tuberculosis the world over. The situation is bad in Nigeria, where health statistics show that a large number die of tuberculosis every month in Lagos, the capital, alone. It is a pitiable situation indeed, because we have no sanatoria or tuberculosis dispensaries." In that same journal there appears a statement, relating to medical services, to the following effect: "It costs £350 per annum to maintain a student in Britain, and therefore if twenty students were sent per annum it would cost the Government £7,000. There is no single Colony in West Africa that cannot stand the expense of £7,000 a year to train doctors." It is suggested that there are large numbers of natives who are quite suitable for training as doctors, and that they should be afforded the necessary opportunities to undergo training and be given a status equal to that of others in their profession when they obtain proper qualifications.

A public official of West Africa, speaking some time ago, referred to their system of education, and among other things he said: "The rate of improvement was so slow … it was worked out and was actually put into writing and presented to the Colonial Office, that if the education programme continued at the present rate of progress, before 80 per cent. or 90 per cent. of the Gold Coast people would be able to write it would take about 3,500 years, and in Nigeria it would take 25,000 years." Now that is a very long time, but when one notices, as I am sure many of your Lordship did, a note which appeared in The Times yesterday about the books and reading material generally available in Lagos, it is possible to understand that this may not be an exaggeration. Certainly there is a distinct call for these people to be trained. Those who have been in contact with them and know them well, say that they are highly intelligent and competent, and altogether must be rated a fine people. The fact that they have not better opportunities for more complete education than is provided is no credit to our Government and would be no credit to any Government.

On the question of policy for the regulation of mining and mineral concessions, Lord Faringdon was informed on January 19, 1943, that certain principles underlie the variations which exist. I have a copy of the principles here but I will not trouble your Lordships by reading them. These principles are interpreted in divers ways. Actual conditions, the payment of taxes, the granting of concessions and the disposal of profits vary widely. In some Colonies grossly inequitable conditions exist. Picture the position where large and powerful companies hold long-term concessions, and wages and conditions vary according to management, regardless of the effect on the economic equilibrium of the country. It may be true that over a period of years the profits are not so large as might be imagined; nevertheless an

enormous proportion of the proceeds of Colonial mining industry are drained out of the country. A great amount of trouble and distress arises because there is no uniform or co-ordinated system of administration with regard to so many of these matters.

Coming to questions which call for immediate consideration, these include the ownership of mineral rights—the noble Duke has largely met that point so far as Nigeria is concerned—the operation of the mines, the administrative framework for dealing with mining matters in the Colonies, and taxation. Ownership vanes from Colony to Colony. There is above all a distinct need for a proper scientific geological survey of the country, in order that we may have a better idea both of its resources and of its possibilities. I ventured on the last occasion on which I spoke on this matter to bring before your Lordships very powerful scientific evidence regarding the tremendous harm which is being done owing to soil erosion. It was shown that that would have a very disastrous effect before very long on the world as a whole. Much of the trouble arises from lack of scientific knowledge regarding the management of the land itself. To some extent that has been recognized and admitted in the Nigerian Ordinance, which provides that those who have a lease of land have to make good the land and the damage done to it. At a joint meeting of the Geological Society of London and the Institution of Mining and Metallurgy last year some very strong criticism was made of the inadequacy of geological surveys in our Colonies, and a resolution was passed expressing concern at "the progressive deterioration of status of certain Colonial geological surveys," which calls for immediate attention, and a number of suggestions was made.

Although I have spoken in a manner which may be regarded as critical, I should like to make it quite clear that I have no desire at all to indulge in destructive criticism. What I am anxious about is that so far as possible our nation shall stand well in the eyes of the world, and that we shall exercise our stewardship in a manner which will be a credit to us, so that the world will recognize that we are endeavouring to discharge that stewardship properly. While I have made some criticisms, I am prepared also to make some recommendations or suggestions. I want to suggest, first of all, that for the benefit of the mine workers in the Colonies there should be a sound Workmen's Compensation Act in each of the West African territories. The present law is inadequate, and is generally pronounced to be unsatisfactory by our competent labour officers. I suggest, too, that we need a vigilant labour inspectorate, armed with real powers to deal with grievances and such questions as safety, rations, housing, wage standards and industrial relations. We want a much larger body than at present. I suggest also that there should be—and this ought to be put in hand at once—the training of native people for positions of responsibility. They are capable of it. I met in West Africa Africans filling very high administrative positions and carrying out their work with an efficiency equal to that of any of their white brethren. It seems to me that when we think of the future development of the world in general and of our Colonies in particular, it is the sheerest waste to neglect this tremendous potential source of real economic wealth and experience which can be made use of in our government and administration.

Another need is the establishment of medical training schools in West Africa, in order that the people from that part of the world shall not be put to the great expense of coming here for training, and sometimes getting a feeling of inferiority. They should be trained among their own people and be in touch with their own people throughout. There should be the provision of better first-aid and ambulance facilities, which should be close to the mines. There must be the opening of more schools and better educational facilities. It should be laid down as a principle that mineral resources should be the property of the State and should never be alienated. Where they have already been alienated, they should be recovered by the State. Royalties should be paid to the State on all minerals worked. That point has been conceded by the new Nigerian provisions, and I suggest that it can be even further extended.

As points for further consideration, I suggest the ownership of mineral rights, the operation of the mines, the administrative framework for dealing with mining matters in the Colonies, and taxation. Any form of colour bar, such as exists in the Northern Rhodesian Copper Belt, should be made illegal. I should like to add a word about the general health of the country and to quote from an article by a medical man in a publication of the National Society for the Prevention of Tuberculosis. He writes: "The medical personnel in West Africa if doing herculean work despite an unfortunate official policy which discriminates unnecessarily between African and European officers with identical British qualifications in the matter of cadre and conditions of service, salary, and grades of appointments."

That is the case that I wish to submit for the attention of your Lordships this afternoon. It is a case which deserves the serious consideration of Parliament. It is fraught with great possibilities for good or ill in the days to come, both to the British Empire and to the world itself, and to peace and prosperity generally. Above all, it affords us an opportunity of providing a memorial to good administration and good, humane government and the proper discharge of stewardship by this country in respect of those people who are less developed and who are under our care. I beg to move for Papers.

3.57 p.m.

LORD RENNELL My Lords, I find myself, as usual, very much in agreement with what the noble Lord, Lord Ammon, has said, except that I cannot follow him quite so far afield as he went on a Motion which deals with the control and administration of mines in British Colonies. Keeping to the terms of that Motion entirely, I would like to express particular satisfaction at the noble Lord's reference to the Mining Ordinance recently passed in Nigeria by the Legislative Council, but to draw his attention to another and almost equally important Ordinance which I think was passed about the same time—namely, the Labour Code, which in point of fact includes in its provisions those provisions which we have adhered to in this country in international agreements in nearly all respects. The combination of those two Ordinances has brought Nigerian legislation in this matter far ahead of that not only of other Colonies but of many countries of independent status.

The point which the noble Lord made about our failure to draw attention to the good things we do—a matter to which reference has been made in your Lordships' House more than once—is particularly notorious in this instance. We are, I am afraid, very well aware that conditions in the mining industry in Nigeria in particular, and in certain other West African Colonies, were a few years ago by no means what they should have been. The reason for that may perhaps be sought in the conditions of war and in the very heavy mining development required to produce, for instance, our tin supplies from one of the few sources still available to us in the circumstances of 1942–43, and also in the Gold Coast to develop the iron and. other resources in order to economize in shipping. The conditions which many of us would deplore must find some excuse in the pressure of necessity which knew no master in those very bad days. But that one of these Colonies where conditions were as bad as the noble Lord has said should have been the first to issue these two Ordinances is not only a matter of great satisfaction to everyone concerned, but an example not only to other Colonies but to many other countries as well. My only regret, which I want to reiterate in this context, is that His Majesty's Government have not seen fit to make any reference whatsoever to this legislation, and it is only a fortuitous chance which has been given to some of us to hear of it. I believe I am right in saying that the texts of these Ordinances are not even available in this country, and I am quite sure that the Press of no other country has even had the opportunity of referring to them or consulting them.

It will be within your Lordships' recollection and that of the noble Duke, in connexion with a Motion tabled in your Lordships' House some time ago in reference to modifications in the Constitution of the Gold Coast, that there were complaints from many parts of your Lordships' House about the hole-and-corner way in which progressive legislation had been announced by His Majesty's Government and was in process of being enacted. That same criticism, I think, is entirely justified in the case of the Nigerian Ordinances. In the interval between the Gold Coast Motion and that of my noble friend Lord Ammon there was a very substantial change proposed by the Governor of Nigeria to the Nigerian Constitution, which was almost equal, but not quite so, in the oblivion and mist surrounding it as the changes in the Gold Coast Constitution. But if this process by which the good we do is carefully hidden under a bushel, and the criticisms which others level at us are allowed to appear in the Press, continues, it is idle to expect that our Colonial administration will not remain under fire, and under unjustified fire, for as far ahead as we can see. I must, with the noble Lord who has just spoken, deplore that this occasion has been allowed to pass without any reference by His Majesty's Government to the good that the Crown has done.

I cannot, I am afraid, follow the noble Lord quite so far as he has gone in the changes of policy which he wishes to see brought about, because I think it would take too long, and might tend to cloud the issue of the answer which the noble Duke will in due course give us. I find it difficult to follow him quite so far as he goes in hoping that we shall have some expression of policy generally on the administration of mining properties and mining deposits in the Colonial Empire. I think it is very difficult, in the diversity of conditions and circumstances which obtain in many possessions

of the Crown overseas, to lay down any uniform policy which would be at all applicable in all the territories to which it must relate. Conditions in a country of so dense a population as Nigeria must, by the nature of things, be wholly different from those which might obtain, for instance, in British Somaliland. To take only one instance, in the coal mines in Nigeria, which are, as the noble Lord will no doubt be aware, a Government enterprise, there is a trade union organization of the African labour. To suggest the introduction of trades union legislation and the possibility of trades union organization, in, for instance, the British Somaliland Protectorate would be entirely preposterous. Therefore a uniform policy is not one which lends itself to any practical expression either by the noble Duke or by any of his successors in office hereafter. It would seem more practical to take the problems case by case and therefore, in this particular instance, to limit ourselves in the discussion to those points raised by the noble Lord in particular, that is, the West African mining industry and Northern Rhodesia.

So far as the question of the colour bar is relevant to the Motion, I do not share the fears expressed about the incidence of a colour bar in West Africa. We have had in many debates in your Lordships' House instances given—I myself have quoted some—of the value of African labour and the possibility of training African labour in the most technical occupations. The Army has contributed in large part to that, and we have seen the results. I do not believe that in West Africa any opportunity has been or is likely to be neglected to use African labour to replace British labour, and therefore to allow the wages of that African labour to remain in the country from which the fruits of mining are drawn. The Northern Rhodesian case is, however, a different one. The colour bar in Northern Rhodesia is not one which, in so far as it exists, is the responsibility of the Gov- ernment of Northern Rhodesia or of any Department of His Majesty's Government in London; it is the product of trade union organization in Northern Rhodesia itself, and the blame, in so far as it is to be laid at anybody's doorstep, would, I think, have been appropriately laid by the noble Duke at the door of the trade union movement in the southern parts of Africa. It is deplorable and it is uneconomic. I am entirely in agreement with my noble friend, but the cure does not lie in legislation or in proposed legislation from the Department for which the noble Duke will speak.

Finally, as to the one other issue which the noble Lord did not develop, but to which he alluded, that is, the profitability of mining enterprises, I think that the subject is one which must be approached with very great diffidence. The values of mineral ores exported from a country do not necessarily hear any relation to the profitability of a mining enterprise, any more than they bear a fixed or necessary relation to the volume of wages paid. There is a danger there of falling into very mistaken conclusions. What, however, was of particular significance in the noble Lord's remarks, as it seems to me, was the proposal that mining royalties should, where necessary, be varied according to the profitability of the enterprise. This constructive proposal is no doubt one which would appeal as much to the administrations of the Colonies concerned as to the enterprises operating the mining deposits, and it is one that I am particularly glad to have heard from the lips of the noble Lord. So far as the supervision of labour in mining enterprises is concerned, I agree whole-heartedly with everything he has said. It is applicable not only to labour in mines, but to labour in secondary industries, and in other enterprises which may be or have been developed in our Colonies.

The necessity for greater medical education for the training of medical officers and for expenditure on public health has been emphasized in another place as well as in your Lordships' House in connexion with the Colonial Development and Welfare Bill. But I think it is not quite fair to suggest that no provision has been made to train African medical officers and public health servants. There is, if my memory serves me aright, a medical school in Lagos, which is training medical students, and I believe something of the same sort has been instituted in the Gold Coast, too. It is recognized by no one more than by the British officers in the administrations of West Africa that the training of African medical officers is of paramount importance, and I hope we shall hear in due course that moneys have been voted and agreed by the Colonial Office out of the Welfare and Development Fund to prosecute medical training of all sorts. I welcome, as my noble friends here do, Lord Ammon's Motion, and, generally speaking, I find myself in considerable support of what he has said, subject to these few reservations which I have made.

4.11 p.m.

LORD HAILEY My Lords, like the noble Lord, Lord Ammon, I also have some hesitation in dealing with this subject, a somewhat specialized subject, on a day like this and in the midst of the emotions which the speeches we have heard

in your Lordships' House this afternoon have not unnaturally aroused; but it is a subject of the very greatest importance to all those who are interested in Colonial affairs. To take it only on the purely material side, the total mineral production of our Colonies amounts annually to something between £60,000,000 and £65,000,000 in value, and it is also true that many of our Colonial territories owe their development very largely to the resources they have obtained through taxation of the mineral industry. There is another reason why the question of the administration of the mining industry is so important, and it is a reason to which Lord Ammon himself referred—that hitherto the development has been due entirely to the introduction of foreign capital. It is in the mining industry that you do get arising, in the most critical form, the question of the relationship between foreign capital and indigenous labour.

Now if I say that I have a very considerable measure of agreement with almost everything that Lord Ammon said, I wish to make only one or two small reservations. I think he will forgive my saying that, though much of what he said was true in so far as it went, in some respects he conveyed rather too general a picture. Perhaps I might almost add that he tended to generalize too much or convey too general an impression from some of the instances he gave. I need not refer in particular to the question of the colour bar in the mining industry because that has already been referred to by Lord Rennell. It is a fact that we have all deeply deplored that European trade union influences have been so strong in Southern Rhodesia and in Northern Rhodesia as to create what is in fact a colour bar position, legalized through the Industrial Conciliation Act in Southern Rhodesia but not so far forming part of the statutory law in Northern Rhodesia. In West Africa, as Lord Rennell said, there is very little sign indeed of the colour bar, and I think you will see there an increasing tendency, such as has been shown in the Belgian Katanga Mines, to employ African labour so far as it is possible to employ it.

Now I will take some of the rather wider questions to which Lord Ammon referred. He welcomed the new Nigerian Ordinance, as I think we must all welcome it, as a sign of our modern policy in this respect, in particular because it asserted the principle of State ownership of all minerals. Now that is not, of course, a new assertion of principle in itself. If you take the Colonies as a whole you will find considerable areas of them indeed in which, fortunately, State ownership of minerals is the accepted principle. I think we would all agree that it is highly desirable that in the Colonies the State should own all minerals. It is unnecessary to go into the questions of principle that have been raised in connexion with English mines. There are particular reasons in connexion with the Colonies, partly because a Colony in that way is best able to take full advantage for local services and the like of the mineral assets in the Colony. There are also special reasons to be found in Colonial conditions. Where land rights are so vague and undetermined as they often are, where there have been no surveys and the like, and where land is so often held in some form of communal tenure, it is often advisable that the State should come in as the owner of mineral rights rather than it should be left to individuals to dispose of those rights, because the result of the latter condition has been, as one has unfortunately seen, that: a small section of the community may arrogate to itself the right of disposal of minerals and the proceeds very seldom go to the community or find their way into the right hands. Therefore that is, in Colonial conditions, a very special reason for the State asserting its right in connexion with all minerals.

At the present time in the West Indies the subject is somewhat mixed because the English law of property, the English Common Law, was extended to them at a very early stage. In Jamaica you get such a curious position as the fact that, while all gold and precious minerals are held to be the property of the Crown, base metals are held to be the property of the surface owner; therefore there are only one or two territories in the West Indies where the Crown is the acknowledged owner of minerals. In Malta the Crown has practically no rights; in Cyprus it has rights only over State lands. When you proceed to Africa you find that there are fortunately very large areas where the Crown right is fully acknowledged. In Kenya, Tanganyika, Uganda, Nyasaland and the northern territories of the Gold Coast the Crown has acknowledged rights over minerals. Proceeding to West Africa you find that in the Gold Coast our somewhat meticulous regard for native property rights led us to acknowledge the surface owner as the owner of the minerals also, with most unhappy consequences. There was a time when native authorities had actually given concessions for mineral rights over areas which extended, I think, to 125 per cent. of the area of the Colony, and it is notorious that the proceeds of these concessions have very seldom been used for the benefit of the community.

Another exception of course is Northern Rhodesia, where, under the terms of the arrangement which terminated the Charter of the British South African Company, all mineral rights are enjoyed still by that company. There is a further reservation in the greater part or the whole of Nigeria, some 200,000 square miles of it, in which although mineral

rights are owned by the Crown half the royalties are shared with the successors of the Royal Nigeria Company. That is the picture of Africa. It needs only to be said that there is a somewhat mixed position in Ceylon where the State practically owns rights only over State lands. In Malaya all lands have been reserved for the State—either the Government in the Straits Settlements or the Sultanates in the Malay States. So there is a very considerable area in which that principle is in force. It might be somewhat difficult to give it its fullest extension now in certain of the Colonial areas. There ought to be very little difficulty indeed in the twenty-five or so Colonies in which minerals have never been worked. It ought not to be difficult to do there what we have done universally throughout the Colonies in the case of oil, where there is an Ordinance reserving the rights to the Crown. But there would be greater difficulties in certain parts of the West Indies, and of course it must be a matter of arrangement if we should desire to recover mineral rights in such areas as Northern Rhodesia. But, subject to that, one feels that we have been able to go in the past a considerable way in the assertion of the principles for which Lord Ammon pleaded, and I hope we might be able to go a good deal further particularly in regard to those areas where minerals have not yet been worked.

There is a second principle. The noble Lord asked that measures should be taken to plough back the permanent assets into the Colonies as far as possible. There again one would be in the very fullest agreement with him. You can do that partly by maintaining the Crown rights over lands, and you can do it further by the system under which you arrange for royalties for lands which you give out and by taxation. I think there is little doubt that in the past we did not fully see the need for making terms in regard to royalties in alienated lands that adequately represented the interest of the Colonies. There were many cases in which there was a low fixed rate, there were other cases in which there was a fixed rate of royalty that varied with the out-turn, and the rates were, as experience has proved, often inadequate. I am glad to say that of late years the practice has improved and has become modernized. We have studied other systems, in particular those such as prevail in the Union of South Africa where the art of fixing royalties has become somewhat complicated and has reached a high science. To give only one example, we have in Sierre Leone fixed royalties on a profit-sharing basis. In one case we take as much as 27½ per cent. of the profits, and that practice is growing, and growing, I feel, in the right direction.

As regards taxation it is equally true that up to a comparatively recent time there was a certain disinclination on the part of Governments to impose an Income Tax. Of late years the practice has grown, certainly since 1936 onwards, and there are now Colonies which work the tax up to a relatively high figure. There is one Colony which works it up to as much as 1os. in the pound; there are two or three which have an 8s. Income Tax; two which have a 6s. one, and a very large number have a 5s. tax. The difficulty in their case is that, owing to the system prevailing with the British Treasury, so long as the British Income Tax rate is 10s. in the pound then in the case of companies registered in Great Britain the Colony is unable to take the benefit of more than 5s. in the pound Income Tax. Of course it can take a higher rate from companies registered in the Colonies themselves.

Very many wonder whether some further adjustment is not possible there in order to give the Colony a fuller benefit from the assets which are being worked and which are in many cases somewhat short-term assets. I hope very much that it may be possible to make a further study of that question in the Colonial Office. I admit that it is an Empire-wide question. It does not depend merely on arrangements made between the British Treasury and the Colony. Nevertheless it is to be hoped that some system can be found which will give the Colonies a larger share in the profits of companies which are registered in Great Britain.

There were some further points raised by Lord Ammon. I think we would all agree that we have got to use every endeavour to improve conditions in the mining areas, but I hope that what he said did not convey the impression to anyone else, as it did convey to me, inadvertently perhaps, that the picture on the whole was a very unfavourable one. I would agree that there are conditions in certain parts of West Africa, particularly in regard to the tin mines and in part to the iron mines, where quite insufficient attention has been paid to living conditions of labour. But that is not the case everywhere. The conditions of African labour in the Northern Rhodesian gold mines are good. They are better there I think than those of a large number of State employees of the Government in the rest of the territory. But when the noble Lord pleads for better medical attendance and for better schooling and better living conditions generally, we must all be with him there. One is glad to see the growth of a skilled labour inspectorate, for one knows that in Great Britain itself all the early Acts—the Shaftesbury Act and the like—were quite inoperative until there was an inspectorate. It is in the growth of that inspectorate that one hopes to see a great improvement in the future.

As regards the geological survey for the extension of which the noble Lord pressed, I am glad to think that part of the operations of the Committee which has been entrusted with making recommendations for expenditure on the research portion of the Colonial Welfare and Development Act seem likely to result in a great extension of the geological survey throughout the Colonies. As to the provision of medical attendance and the local training of doctors, I am hoping that the result of the Commission which the Secretary of State lately set up for West Africa will deal not merely with the question of medical schools like that to which Lord Rennell referred at Lagos, but the institution of universities which will be able to give their own registrable degrees. I hope the first fruits of the Commission which is now sitting will be the growth of universities in West Africa and the completion of the university in East Africa, one of the chief functions of which will be to provide vocational training and particularly training in medicine.

These are somewhat detached questions, partly of principle and partly of detail. I think we are all conscious of the position in regard to the development of mining in the Colonies which in the past had a good number of defects. I think we are all conscious that some of the conditions at all events need, I will not say radical but very considerable improvement. I think we are all conscious of the necessity of doing everything we can to train the African to take his own part in that industry. I think we are all conscious that we should do everything we can to see that the maximum amount of the assets of the mines are retained in the Colony itself by any measure we can take. I noticed that the noble Lord, Lord Ammon, did not suggest universal State management or control of mines. He did not go so far as that. I myself have only seen personally one example of a State-man-aged mine in our Colonies, although I know one or two others do exist. I think it would be very useful indeed if we could have a further experiment in the management of mines by the State, not as the assertion of a general economic principle or anything of that kind, but purely as affording a check on the amount of wages that should be paid and a check on the conditions that should prevail. Purely as I say as an experiment for that purpose, I would like to see it done. I would not like to go further and advocate that we should come from the State ownership of minerals to the State development of mines.

4.33 P.m.

LORD HARLECH My Lords, I vividly remember going in Nigeria to the only State-owned, State-run monopoly gold mine in the British Empire some nineteen years ago. As I stated in my published report I never saw more deplorable conditions. I am quite convinced that ownership of mines by the State or even ownership of minerals by the State is not a panacea and not the last word in the problems—very difficult problems some of them—that we are considering this afternoon. I agree that in countries where the whereabouts of minerals are frequently unknown—who a few years ago would have thought that our most important war reserve of high grade iron ore was a great deposit in the interior of Sierra Leone?—and especially in view of the fact that the owners of the surface soil are in most cases natives practising shifting cultivation who have no permanent residence, that there is a case for the State ownership of minerals, but when it comes to State exploitation of those minerals I have very grave doubts. The noble Lord, Lord Ammon, has used sticks to beat the people who are developing minerals, but if the Government are doing it you have nothing to beat, you have nothing but a State monopoly.

It is a moot point, open to question, whether it is desirable or undesirable that the Protectorate of Northern Rhodesia should acquire the mineral rights as the Colony of Southern Rhodesia has from the British South Africa Company. Nobody can deny that under the Cave award and indeed all the documents before that the full and legal right of Rhode's Company to these minerals existed. They would have to be bought out fairly as was done by the Government of Southern Rhodesia. This Copper Belt in Northern Rhodesia to which the noble Lord, Lord Ammon, referred is an outstanding example of a colour bar, in fact the only one he can quote. There, miles away from a port, in the very heart of Africa, deep in the Tropics, are large deposits of copper entirely dependent upon what is going to be the eventual market price of copper in all the nations of the world and the cost of production locally. I can say without fear of contradiction that none of the capitalistic interests any more than the Governmental interests who have hitherto endeavoured to conduct that up-and-down mineral development, one year prosperous, the next year shutting down in Northern Rhodesia, would be other than delighted if the colour bar could be got rid of.

It means you have to import from South Africa members of the Miners' Union who are wedded to the tradition of the industrial colour bar now enshrined in an Act of Parliament of the Union of South Africa. No amount of legislation by the Secretary of State for the Colonies or by the local Government in Northern Rhodesia will have the slightest effect

on that colour bar. It is only if and when the Labour movement in South Africa will let up on the industrial colour bar, and will allow native trade unions to operate and natives to work alongside white people in particular trades, that you will get any change in an area dependent for such white labour as it requires entirely upon the Union of South Africa and upon a trade union which is wedded to this particular view and this particular tradition, a union whose members are members of a political Party sworn to defend that tradition.

I think that among the problems of health, welfare, schools and all the things which the noble Lord, Lord Ammon, dealt with in introducing this Motion, the most interesting problem is whether it is desirable to have a practice whereby the native labour required for the extraction of these valuable minerals and their export to the markets of the world should be provided by temporary migratory labour coming on contract for so many months at a time and then going back to agricultural life and tribal life, or whether it should be undertaken by permanently settled labour, leaving for ever their tribal life and developing into native artisans, with all that that means, native technicians and native managers, and, above all, living in entirely urban European conditions. I have heard it argued both ways, and undoubtedly at some of the longer-life and, probably more profitable, copper mines in Northern Rhodesia you see the two systems both being run side by side. I see no objection to that. I am quite sure, though, that it is very undesirable that any African native who is going back to his tribe, to his tribal life and his agricultural life on his reserve, should spend too long a time at mines, or indeed in any European employment.

I commend in this matter the provision by the Union of South Africa in respect of the native labour in the mandated territory of South-West Africa. There the Ovambo, who provide the bulk of the labour in the northern part of the country, are allowed to contract to go out of their reserve for a year, and if, after the completion of that, they wish to continue for another year, providing they go before a labour inspector and a magistrate, and that both the employer and they themselves wish to continue for another year, that is allowed. But after two years it is the absolute law they have got to go back to their reserve, whether they like it or not, and whatever the employer says, so as to prevent the decay of tribal life and the loss of their home traditions and surroundings. That is the only case of which I am aware where it has been reduced to law.

If you talk to any of the very knowledgeable labour managers on the Witwatersrand they will tell you that it has never been their wish that natives who go to work in the Johannesburg gold mines should stay too long. Their desire is that these natives should return to their own place. Those who do follow this migratory business seem to agree in this. I can only speak for people for whom I have been responsible, such as the Basutos of Basutoland, and I cannot say that periodic sojourns in European employment of one sort or another, including the mines, seem to have either undermined or upset their tribal loyalty, their tribal traditions, their tribal cohesion, or their perpetual desire to return to their beloved cattle and their beloved land. In fact, there are a certain number of educated Basutos, mainly clerks, living more or less permanently with their families in Johannesburg—not at the mines—and it is always their expressed intention sooner or later to go back to the land of their fathers—if only to die there. Although the annual head tax on these people is higher in Basutoland under us than it would be if they became Union subjects they remain on the tax books of Basutoland by their own will because they wish to preserve their tribal connexion.

On the other hand, where you do establish families, men, women and children, in permanent mining settlements, on mining sites, mixed up with European miners and the like, you have to recognize that you are creating a new, permanent, African, urban proletariat. Therefore, it is quite obvious that every effort must be made to provide them and their children with technical education from the start, and to make it really a chance for them to become high grade, high-earning, permanent assets to the mining or mechanical or metallurgical, or electrical, or other industries ancillary to permanent mining. This is particularly difficult in places like Nigeria where, apart from the Government coal mine, the mining is for alluvial tin, in which, as the noble Lord said, when in introducing his Motion he talked about the amenities of the country, you take up a great quantity of the earth, dig up a little deposit of cassiterite, move on, and try to find some more. In perpetually shifting mining like that it is not possible to have conditions under which you can train Africans to be high salary-earning, skilled technicians. In East and West Africa nobody, for climatic and other reasons, would employ a white man if he could get an African to do the work for him. It is not a sensible thing to do and nobody would do it.

I conclude by alluding to the point taken by the noble Lord, Lord Hailey, on which the Government's reconsideration is asked. Undoubtedly there is a growing feeling not merely among Europeans but among natives that too great a share of the taxation, and particularly the war-time taxation, of these mining enterprises enures to the benefit of the United Kingdom taxpayer and too little to the welfare and the spending power of the local Government. I have heard that said in many places. Before the war there was not a great deal in it, but now with the standard rate of Income Tax at 10s. in the pound and E.P.T. on top of that at 100 per cent. vast millions have gone into the United Kingdom Exchequer for spending in support of the war effort in the United Kingdom, and only a comparatively small share of the wealth created has been at the disposal of the dependency overseas. You hear, "Boston tea party over again," and all the old cries to the effect that the Colonies are being taxed for the benefit of the Mother Country. Well, in wartime we have our answer on this. This money is not being spent only on the people of the United Kingdom—the Colonies benefit too. It is all being spent—this vast and heavy taxation collected by the United Kingdom from the mineral enterprises in Northern Rhodesia and elsewhere—for the united war effort. But I am quite sure that if that went on in peace-time there would be a growing feeling that we were not consistent in saying that we do not tax the Colonies for the benefit of the British Empire. True, it is only an indirect form of tax, but it is a terrific tax at its present rate and with its present incidence, and it undoubtedly comes from the wealth created by the Almighty in those oversea countries and obtained by labour in those countries; and so I am sure that that must not go on in peace-time.

I do not attach very much importance to laws, ordinances, documents and the like, compared with the cadre in the Government Service—the inspectorate, the District Commissioners, the officials who are going to carry these things out. If highly technical enterprises are going to take place in the backward countries, unless there is an entirely independent authority, consisting of welfare officers responsible for seeing not that the letter of some law is observed but that progressively advancing and decent conditions obtain for all concerned, black and white, in these tropical areas, all laws are just window-dressing. The vital thing is the quality of the personnel who go out there; as I see it, the whole answer to all these problems lies there. Can Great Britain and the rest of the Commonwealth, including the Dominions, always supply men with a real vocation and with adequate training to do this more than missionary work, this tremendously responsible work of seeing that the backward peoples of the Empire, in the course of development which takes place in the interests of the world as a whole, get the square deal which they ought to have? That can be done only by having on the spot men of real quality with a real voca- tion and high ideals. To my mind it does not matter so much who is the Colonial Secretary or who is in the Colonial Office; what really matters is that we send out the best of our women as well as of our men to undertake the tasks of administration, inspection and personal responsibility in the contact with the people on the jobs, whether agricultural, mineral or any other, in the Colonial Dependencies.

4.53 P.m.

THE PARLIAMENTARY UNDER-SECRETARY OF STATE FOR THE COLONIES (THE DUKE OF DEVONSHIRE)
My Lords, I am very grateful to the noble Lord who moved this Motion for his kindness in agreeing to postpone it to suit my convenience, and for his very kind words to me. I am also grateful to him for his tribute to the Nigerian Labour Ordinance; and in fact I think that almost throughout his speech he was knocking at an open door. On some few matters I did not find myself in agreement with him, but on those I think that he has been very fully answered already by other noble Lords who have spoken, and by my noble relative who has just sat down. In particular, the criticisms which he made of the colour bar have, I think, been fully answered, and I do not propose to refer to that subject any more.

Both he and the noble Lord, Lord Rennell, said that we did good by stealth, as it were, and that we should procure greater publicity for it. That is a matter to which I have given a great deal of thought, but it is very hard to secure publicity. The newspapers are strictly rationed for paper, and publish in the main those things which they think will interest the public; and the great heart of the British public is less stirred by a labour ordinance, however excellent, in Nigeria, or even, if I may dare to say so, by the proceedings of this House, than by the alleged enticement of a girl in Barnet. It is difficult to get adequate publicity for matters of this kind, but what has been said will be noted, and we shall try to see what we can do to get more publicity for the steady progress which is being ma de in matters of the kind to which the noble Lord referred.

The general subject of mining in the Colonies is, of course, one of very far-reaching importance in very many ways. It affects and affects most profoundly, the lives and the whole system of living of the populations in those Colonies where minerals are discovered; and, by producing revenue from a hitherto relatively barren territory, it may make possible administrative reforms and advances which even with the aid of the Colonial Development and Welfare Fund would otherwise have been scarcely within the realm of practical politics. Because it is of such great importance, the whole subject of mining operations in the Colonies is now under review, in order that a definite policy for the guidance of Colonial Governments may be formulated. The conditions, as has been mentioned by the noble Lord, Lord Hailey, are very diverse in the different Colonies, and it is therefore quite impossible to lay down more than broad, general principles. It would not be possible to lay down a detailed course of policy which would be equally applicable in every case.

There is, of course, one great difference between mining activities and almost all other forms of productive activity, such as agriculture, animal husbandry and forestry. These are continuous processes and, provided due attention is given to the maintenance of soil fertility, and provided that the goat and the camel can be restrained from their hereditary task of creating a desert, there is no reason why they should not go on indefinitely. Mining, however, is an entirely different operation, in that it consists in the removal of valuable substances which, in the nature of things, can be removed only once. I believe that in the case of sulphur it is mined in volcanic vents and so does renew itself, but otherwise minerals do not renew themselves at all, and once you have taken them away you have taken them away for good. The process is therefore in the nature of the realization of a capital asset rather than the reaping of a crop. The aim of mining policy must therefore be to make the best possible arrangements for realizing this capital asset and to make sure that when it is exhausted the labour forces who have been attracted to the scene of operations shall not be left high and dry.

The noble Lord who spoke last mentioned that mining operations vary greatly. Some are temporary operations from which you move on. The labour force which is desirable varies greatly according to whether the life of your deposit is likely to be a long or a short one. Some measure of control is therefore necessary and inevitable, but care must be taken to avoid such excessive control as would stifle private enterprise or check the flow of capital for the development of the mineral resources of the Colonies. I can see no reason, however, why the interests of the private investor and the limited liability company should not be reconciled with those of the Colonial communities concerned, to the mutual advantage of both. As has already been said, the law regarding the ownership of minerals varies very greatly between the different Colonies. In some the Crown owns all the rights; in others it retains rights in lands alienated after a given date, the rights in lands alienated before that date being in the hands of private owners. In other territories, again, the rights are vested in corporations, and in others all mineral rights belong to the surface owners.

In the Colonies especially I think that powerful arguments can be adduced for the vesting of all mineral rights in the Crown. In pursuit of that conception, most Colonial legislation already provides for the reservation of mineral rights in any future sales or alienations of Crown lands; but a very different problem arises when, as has not infrequently happened, mineral rights have already been alienated and have passed into private hands. The question then arises whether it is or is not desirable for the Colonial Governments to re-acquire such rights for the Crown. It would obviously be entirely contrary to the principles of equity for such a re-acquisition to be made without compensation. In the case of mineral deposits which are already being actively exploited, it is a matter for judgment in each separate and individual case whether the course of acquisition would in fact be justified ray the advantages gained. It is not possible, therefore, to lay down any general rule about the policy governing the acquisition for the Crown of mineral rights.

It seems desirable that there should be a comprehensive geological survey of the potential mineral wealth of the Colonial Empire. My right honourable friend has therefore appointed a committee of eminent geologists to advise him. Their report has been made, and is now under consideration in the office. It recommends the setting up of regional surveys in the Colonial Empire, with a central pool in London, from which specialized officers can be loaned to the regional surveys or carry out geological work in the small Colonies not included in the regional surveys. I believe that is a better plan than the setting up of a Mines Department in the Colonial Office, because the conditions are so diverse that no central office could possibly be competent to deal with all the problems which would arise. What seems to be required is the strengthening of the Mines Departments in the Colonies and closer co-operation

between these Departments and the geological surveys. It is scarcely possible to hope that the Mines Departments in all the different Colonies should be familiar with all types of mine. That would seem to indicate the necessity for some form of expert advice being available when required, and I think it possible that this expert advice can be made available by the setting up of a panel of experts, each one expert in some special department of mining, who could make investigations and give technical advice whenever a problem arises.

Then the noble Lord and other noble Lords went into the question of taxation. There are two aspects to be considered. On the one hand, there is the question of whether an enterprise which is exploiting the mineral resources of a particular Colony is making sufficient contribution to the revenue of that Colony, and, on the other, there is the difficult and thorny question of the division, in the cases of mining companies which are registered or controlled in the United Kingdom and are therefore subject not only to local taxation but also to United Kingdom taxation, of the total tax levied between the United Kingdom and the Colonial Governments. That is a very difficult question, which will need very careful consideration when war conditions exist no longer. The normal method by which Colonial Governments obtain revenue from mines as such is either by means of a royalty on the mineral worked or by export duties. Royalty is a very much misunderstood term. Strictly speaking, it is not taxation or a rent, but purchase money or compensation for the removal of a capital asset, and the payment of royalty does not therefore relieve a company from its liability to general taxation. Where minerals are privately owned and the royalty therefore goes into private hands, Colonial Governments have sometimes derived revenue by means of an ex- port duty, especially where more general forms of direct taxation are not in operation.

I think I can definitely assure the noble Lord that the general policy to be laid down from the Colonial Office will be that, while anything in the nature of penal taxation, taxation such as is likely to discourage any kind of individual enterprise, must be avoided, mining enterprise should be taxed on a scale which will not only repay to the Government such expenditure as they incur in the way of new roads, possibly new railways or other communications, but will replace the capital asset which will have gone when the mineral is exhausted. On the difficult question of double taxation the arrangements are now being reviewed in the light of the principles of the Treaty which has just been concluded between the United Kingdom and the United States on this same subject of double taxation.

The noble Lord who moved the Motion raised the question of the education of Africans and other Colonial nationals to undertake positions of responsibility. This question of course affects the mining industry, but not the mining industry alone. He also referred to the education of doctors in Africa. I can assure him that there is a medical school in Lagos, but for some reason the practice of the bar seems to have more attraction than the practice of medicine, and greater numbers of students are attracted by the legal profession. But the question of the education of Africans affects, of course, the whole of Colonial administration and of social welfare in the Colonies. But I can assure the noble Lord that Colonial nationals are being actively encouraged and taught to take a more prominent part in the development of their own affairs. To take only one example, a grant of £401,000 has recently been obtained under the Colonial Development and Welfare Act for a ten-year plan of technical education in Nigeria. In addition, Government scholarships are to be made available for suitably qualified members of the staff of the Nigerian Government colliery and of the Mines Department. That will enable students to come to this country for training in mining engineering at a British university. Of course, these are voluntary spare-time classes, and other measures have also been introduced to enable African technical staff of the Mines Department to improve their qualifications. So I hope I can assure the noble Lord that the kind of steps that he desires are being pursued now, and they will be pursued more actively as soon as the war is over and the staff can be made available.

I do not propose to follow the noble Lord in his references to the colour bar. On that I think he has been so fully answered that I need not pursue the subject. My right honourable friend has stated publicly quite recently that the principles outlined in the resolution of the British Council of Christian Churches do form the basis of the policy of His Majesty's Government, which is to do all in their power to secure equal treatment irrespectiv6 of colour for all His Majesty's subjects. That remains the policy of His Majesty's Government.

The noble Lord also referred to the question of lack of co-ordination between mines and the needs of surrounding villages. Of course the opening up of a mine inevitably produces far-reaching changes in the life of a primitive community. In Africa, more particularly, the African is transferred not by compulsion but by attraction from rural to

urban surroundings. The problems created by this abrupt change—a noble Lord used the phrase "an urban proletariat"—are being carefully considered by my right honourable friend's experts and advisers. At the five principal mining centres in Northern Rhodesia the mines managements provide and supervise their own mine compounds for the accommodation of the people they employ. In each case a town has grown up outside the mine's compound, and in each of these towns the Government have established a township board for the purpose of local administration. Outside the boundaries of these townships there are a number of small villages, and these are under the control of the local native administrations, which employ their own sanitary inspectors and provide certain other services, such as the control of the brewing and sale of beer, which provides one of the principal social problems in the mining townships and the adjacent villages.

The noble Lord also referred to the social and physiological disturbance created by taking natives away from their villages to work in mines at a distance. I do not know whether your Lordships are under any misapprehension on that subject. No compulsion is exercised in Colonial territory for the recruitment of labour for the mines. There was one exception which no longer exists, which was at a moment of acute need, when was necessary for vital war production to conscript labour for the Nigerian tin mines. But that is a thing of the past. The African seeks work on the mines of his own volition, and it would be extremely difficult to check the recruitment of labour for the mines, even if it were desirable to do so. The attractions are relatively high wages and the possibility o f earning in a year or two more cash than the cultivator of the soil could earn in many years, the prospects of a change in a new occupation, and perhaps the love of adventure. It is a case that an African who has served in the mines does enjoy a prestige which his stay-at-home brother does not. His visit to the mine; may make formidable problems. He may, unhappily, contract miner's phthisis some other disease of civilization. But he goes back home with his bicycle, his gramophone, possibly his wireless set, and, above all, with cash to buy himself a wife or two; and he would regard it as most unjust if he were debarred from taking part in this adventure.

I would maintain, therefore, that the migration of labour from all over Africa to the mining areas is not in itself bad, though of course it may develop highly undesirable features such as the unsatisfactory conditions of recruitment, travel or employment and excessive migration involving absence from home for too long periods—and I could not agree more than I do with what my noble relative said about that. It is most undesirable that if a man is going to be a visiting miner it should be for a long period. Absence for too long periods of too large a proportion of the male population from their homes may lead to a breaking down of local custom and authority, to a loosening of home ties, and so on. All those things need to be very carefully considered.

The policy of the Governments of Northern Rhodesia and Nyasaland is to secure proper conditions of employment for their nationals migrating to Southern Rhodesia or to the Union of South Africa, by agreement with the authorities in those territories. The tripartite agreement among Northern Rhodesia, Nyasaland and Southern Rhodesia provides, among other things, for the proper care of migrant labour during employment, the provision of rest camps, food depots and so forth on the main labour routes, the provision of cheap and rapid transport and the introduction of a voluntary remittance system so that the labourer can send a fair proportion of his wages home. That is the tripartite agreement among Northern Rhodesia, Nyasaland and Southern Rhodesia. The Northern Rhodesian and Nyasaland Governments have made an agreement permitting the Witwatersrand Labour Association to recruit from their territories a fixed number of labourers for work in the Union. The conditions of employment conform to the requirements of the I.L.O. and include free transport from the place of recruitment to Johannesburg; the provision of free quarters; adequate food and medical services; repatriation and transport home after a period not exceeding eighteen months; a system of deferred pay whereby approximately a quarter of the workman's pay is retained for him pending his return home; and the advance to each African on engagement of a sum equal to his current taxation to his territory and the payment of that sum to his Government.

The danger of excessive migration is being met by local development designed to provide more attractive conditions of life and work at home. Both the Governments of Nyasaland and Northern Rhodesia are actively engaged on the preparation of plans for post-war social and economic development designed to improve the standard of living and economic conditions in both rural and municipal areas, and it is reasonable to hope that the application of these plans will tend to some extent to reduce the stream of migration of Africans in search of work and money.

Measures are already actively in hand to deal with the problems of health in the mining areas. A bureau is being set up in Northern Rhodesia which will undertake the systematic examination of all persons engaged in the mining industry with a view to checking the spread of silicosis. In Nyasaland a Committee has already reported on the problem of venereal disease, and some of its recommendations are already being put into operation. My right honourable friend has recently approved the grant of £42,000 under the Colonial Development and Welfare Act for the purchase of drugs to provide free treatment at all Government and mission medical centres, and active steps are also being taken to deal with tuberculosis in the rural areas. I hope I have said enough to show that the noble Lord, in what he said this afternoon, is really knocking at an open door. The policy he desires is being pursued, and actively pursued. I hope he will realize that we are, to a large extent, in agreement with him, and that he will find himself able to withdraw his Motion.

5.15 p.m.

LORD AMMON My Lords, if anything justified my putting the Motion on the Paper it is the statement we have just had from the noble Duke. He has done something to open the door—the open door at which he says I have been pushing—in order that something may be known of the work that is being done. I am grateful for the support I had from other noble Lords. I accept with due modesty the moderate admonitions they gave me for using a rather broad brush. At the same time I note what the noble Duke said about the flow from the countryside to the mines. After all, what he has done is to show that human nature is just the same in Africa as in other parts of the world—there is just the same flow from the countryside to the urban districts. That indicates the need there is for care to be given to their welfare when they have arrived in those areas. I beg leave to withdraw the Motion.

Motion for Papers, by leave, withdrawn.

5.16 p.m.

ANNEXURE 2

[1887] UKPC 29

Judicial Committee of the Privy Council

Lambe v. North British & Mercantile Fire & Life Insurance Co.

(1887) L.R. 12 App. Cas. 575, 1887 CarswellQue 2, [1886-90] All E.R. Rep. 770, [1887] UKPC 29, [1887] J.C.J. No. 1, [1917-27] C.T.C. 82, (1887) 3 T.L.R. 742, 4 Cart. B.N.A. 7, (1887) 56 L.J.P.C. 87, (1887) 57 L.T. 377, (1887) L.R. 12 App. Cas. 575, C.R. [9] A.C. 296

BANK OF TORONTO, Appellant, and LAMBE, Respondent

MERCHANTS BANK OF CANADA, Appellant, and LAMBE, Respondent
CANADIAN BANK OF COMMERCE, Appellant, and LAMBE, Respondent
NORTH BRITISH MERCANTILE INSURANCE COMPANY, Appellant, and LAMBE, Respondent

Lord Hobhouse, Lord Macnaghten, Sir Barnes Peacock, Sir Richard Baggallay, and Sir Richard Couch

Judgment: July 9, 1887
Docket: None given

Proceedings: on Appeal from the Court of Queen's Bench for Lower Canada, Province of Quebec, reported ante at p. 19
Counsel: *W. H. Kerr, Q.C.* (Canada), and *Kenelm Digby*, for the appellant in the first appeal.
Cohen, Q.C., and *W. W. Kerr*, for the appellant in the second appeal.
Blake, Q.C. (Canada), and *Jeune*, in the third appeal.
W. H. Kerr, Q.C. (Canada), and *W. W. Kerr*, in the fourth appeal.
Geoffrion, Q.C. (Canada), and *Fullarton*, for the respondent in all the appeals.
Kerr, Q.C., and *Digby*, in the first appeal.
Cohen, Q.C., and *Blake, Q.C.* were subsequently heard for the appellants.

Subject: Constitutional; Provincial Tax

Table of Authorities

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R. v. Massey-Harris Co., 6 Terr. L.R. 128 — *applied*
Yorkshire Loan Co., Re, 4 B.C.R. 265, 274 — *applied*
Levitt v. R., 43 S.C.R. 126 — *commented on*
Pigeon v. Recorder's Court, 17 S.C.R. 504 — *commented on*
R. v. Hill, 15 O.L.R. 406 — *commented on*
English v. O'Neill, 4 Terr. L.R. 77 — *considered*
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Attorney-General of B. C. v. Victoria, 2 B.C.R. 3 — *followed*
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Halifax v. Jones, 28 N.S.R. 459 — *followed*

Edgar v. Central Bank, 15 A.R. 193 — *reference*
International Text Book Co. v. Brown, 13 O.L.R. 644 — *reference*
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McGowan v. Hudson's Bay Co., 5 Terr. L.R. 155 — *reference*
Montreal Can. Fire Ins. Co. v. Therien, 34 Que. S.C. 209 — *reference*
Quirt v. R., 19 S.C.R. 522 — *reference*
R. v. Ronan, 23 N.S.R. 458 — *reference*
Small Debts Act, Re, 5 B.C.R. 262 — *reference*
Stark v. Schuster, 14 Man. R. 685, 699 — *reference*
Stephens v. McArthur, 19 S.C.R. 466 — *reference*
St. Louis v. R., 25 S.C.R. 678 — *reference*
Thomas v. Haliburton, 26 N.S.R. 76 — *reference*
Huson v. South Norwich, 24 S.C.R. 161 — *relied on*
Poole v. Victoria, 2 B.C.R. 274 — *relied on*
R. v. Boscowitz, 4 B.C.R. 135 — *relied on*

Words and phrases considered:

DIRECT TAXATION

. . . does [the tax] fall within the description of taxation allowed by class 2 of sect. 92 of the Federation Act, viz., "Direct taxation within the province in order to the raising of a revenue for provincial purposes?"

. . . . .

. . . the definition [of direct and indirect taxation] of John Stuart Mill . . . is as follows: —

Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another; such are the excise or customs.

. . . . .

Their Lordships . . . take Mill's definition above quoted as a fair basis for testing the character of the tax in question, not only because it is chosen by the appellant's counsel, nor only because it is that of an eminent writer, nor with the intention that it should be considered a binding legal definition, but because it seems to them to embody with sufficient accuracy for this purpose an understanding of the most obvious indicia of direct and indirect taxation, which is a common understanding, and is likely to have been present to the minds of those who passed the *Federation Act*.

The first three appeals were from three decrees of the Court of Queen's Bench (Jan. 23, 1885) reversing decrees of the Superior Court for Lower Canada in the district of Montreal (May 12, 1883); the fourth appeal was from a decree of the Court of Queen's Bench (Jan. 23, 1885) affirming a decree of the Superior Court (May 23, 1884).

The appeals to the Judicial Committee of the Privy Council were heard by Lord Hobhouse, Lord Macnaghten, Sir Barnes Peacock, Sir Richard Baggallay, and Sir Richard Couch, on the 10th, 11th, 22nd, 29th June, 1887.

The judgment of their Lordships was delivered by *Lord Hobhouse*:

1 These appeals raise one of the many difficult questions which have come up for judicial decision under those provisions of the British North America Act, 1867, which apportion legislative powers between the Parliament of the Dominion and the Legislatures of the Provinces. It is undoubtedly a case of great constitutional importance, as the appellants' counsel have earnestly impressed upon their Lordships. But questions of this class have been left for the decision of the ordinary Courts of law, which must treat the provisions of this Act in question by the same methods of construction and exposition which they apply to other statutes. A number of incorporated companies are resisting payment of a tax imposed by the Legislature of Quebec, and four of them are the present appellants. It will be convenient first of all to deal with the case of the Bank of Toronto, which was argued first.

2 In the year 1882 the Quebec Legislature passed a statute entitled "An Act to impose certain direct taxes on certain commercial corporations." It is thereby enacted that every bank carrying on the business of banking in this province; every

insurance company accepting risks and transacting the business of insurance in this province; every incorporated company carrying on any labour, trade, or business in this province; and a number of other specified companies, shall annually pay the several taxes thereby imposed upon them. In the case of banks the tax imposed is a sum varying with the paid up-capital, and an additional sum for each office or place of business.

3 The appellant bank was incorporated in the year 1855 by an Act of the then Parliament of Canada. Its pricnipal place of business is at Toronto, but it has an agency at Montreal. Its capital is said to be kept at Toronto, from whence are transmitted the funds necessary to carry on the business at Montreal. The amount of its capital at present belonging to persons resident in the Province of Quebec, and the amount disposable for the Montreal agency, are respectively much less than the amount belonging to other persons and the amount disposable elsewhere.

4 The bank resists payment of the tax in question on the ground that the Quebec Legislature had no power to pass the statute which imposes it. Mr. Justice Rainville sitting in the Superior Court took that view, and dismissed an action brought by the Government officer, who is the respondent. The Court of Queen's Bench, by a majority of three Judges to two, took the contrary view, and gave the plaintiff a decree. The case comes here on appeal from that decree of the Court of Queen's Bench.

5 The principal grounds on which the Superior Court rested its judgment were as follows: — That the tax is an indirect one; that it is not imposed within the limits of the province; that the Parliament has exclusive power to regulate banks; that the Provincial Legislature can tax only that which exists by their authority or is introduced by their permission; and that if the power to tax such banks as this exists, they may be crushed out by it, and so the power of the Parliament to create them may be nullified. The grounds stated in the decree of the Queen's Bench are two, viz., that the tax is a direct tax, and that it is also a matter of a merely local or private nature in the province, and so falls within class 16 of the matters of provincial legislation. It has not been contended at the bar that the Provincial Legislature can tax only that which exists on their authority or permission. And when the appellants' counsel were proceeding to argue that the tax did not fall within class 16, their Lordships intimated that they would prefer to hear first what could be said in favour of the opposite view. All the other grounds have been argued very fully, and their Lordships must add very ably, at the bar.

6 To ascertain whether or no the tax is lawfully imposed, it will be best to follow the method of inquiry adopted in other cases. First, does it fall within the description of taxation allowed by class 2 of sec. 92 of the Federation Act, viz., "Direct taxation within the province in order to the raising of revenue for provincial purposes?" Secondly, if it does, are we compelled by anything in sec. 91 or in the other parts of the Act so to cut down the full meaning of the words of sec. 92 that they shall not cover this tax?

7 First, is the tax a direct tax? For the argument of this question the opinions of a great many writers on political economy have been cited, and it is quite proper, or rather necessary, to have careful regard to such opinions, as has been said in previous cases before this Board. But it must not be forgotten that the question is a legal one, viz., what the words mean, as used in this statute; whereas the economists are always seeking to trace the effect of taxation throughout the community, and are apt to use the words "direct," and "indirect," according as they find that the burden of a tax abides more or less with the person who first pays it. This distinction is illustrated very clearly by the quotations from a very able and clear thinker, the late Mr. Fawcett, who, after giving his tests of direct and indirect taxation, makes remarks to the effect that a tax may be made direct or indirect by the position of the taxpayers or by private bargains about its payment. Doubtless, such remarks have their value in an economical discussion. Probably it is true of every indirect tax that some persons are both the first and the final payers of it; and of every direct tax that it affects persons other than the first payers; and the excellence of an economists definition will be measured by the accuracy with which it contemplates and embraces every incident of the thing defined. But that very excellence impairs its value for the purposes of the lawyer. The Legislature cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases. It must have contemplated some tangible dividing line referable to and ascertainable by the general tendencies of the tax and the common understanding of men as to those tendencies.

8 After some consideration Mr. Kerr chose the definition of John Stuart Mill as the one he would prefer to abide by. That definition is as follows: —

> Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another; such are the excise or customs.
>
> The producer or importer of a commodity is called upon to pay a tax on it, not with the intention to levy a peculiar contribution upon him, but to tax through him the consumers of the commodity, from whom it is supposed that he will recover the amount by means of an advance in price.

9 It is said that Mill adds a term — that to be strictly direct a tax must be general; and this condition was much pressed at the bar. Their Lordships have not thought it necessary to examine Mill's works for the purpose of ascertaining precisely what he does say on this point; nor would they presume to say whether for economical purposes such a condition is sound or unsound; but they have no hesitation in rejecting it for legal purposes. It would deny the character of a direct tax to the income tax of this country, which is always spoken of as such, and is generally looked upon as a direct tax of the most obvious kind; and it would run counter to the common understanding of men on this subject, which is one main clue to the meaning of the Legislature.

10 Their Lordships then take Mill's definition above quoted as a fair basis for testing the character of the tax in question, not only because it is chosen by the appellant's counsel, nor only because it is that of an eminent writer, nor with the intention that it should be considered a binding legal definition, but because it seems to them to embody with sufficient accuracy for this purpose an understanding of the most obvious *indicia* of direct and indirect taxation, which is a common understanding, and is likely to have been present in the minds of those who passed the Federation Act.

11 Now whether the probabilities of the case or the frame of the Quebec Act are considered, it appears to their Lordships that the Quebec Legislature must have intended and desired that the very corporations from whom the tax is demanded should pay and finally bear it. It is carefully designated for that purpose. It is not like a custom's duty which enters at once into the price of a taxed commodity. There the tax is demanded of the importer, while nobody expects or intends that he shall finally bear it. All scientific economists teach that it is paid, and scientific financiers intend that it shall be paid, by the consumer; and even those who do not accept the conclusions of the economists maintain that it is paid, and intend it to be paid, by the foreign producer. Nobody thinks that it is, or intends that it shall be, paid by the importer from whom it is demanded. But the tax now in question is demanded directly of the bank apparently for the reasonable purpose of getting contributions for provincial purposes from those who are making profits by provincial business. It is not a tax on any commodity which the bank deals in and can sell at an enhanced price to its customers. It is not a tax on its profits, nor on its several transactions. It is a direct lump sum, to be assessed by simple reference to its paid-up capital and its places of business. It may possibly happen that in the intricacies of mercantile dealings the bank may find a way to recoup itself out of the pockets of its Quebec customers. But the way must be an obscure and circuitous one, the amount of recoupment cannot bear any direct relation to the amount of tax paid, and if the bank does manage it, the result will not improbably disappoint the intention and desire of the Quebec Government. For these reasons their Lordships hold the tax to be direct taxation within class 2 of sec. 92 of the Federation Act.

12 There is nothing in the previous decisions on the question of direct taxation which is adverse to this view. In the case of *Queen Insurance Co.*, 3 App. Cas., 1090 (Quebec P.C.), the disputed tax was imposed under cover of a license to be taken out by insurers. But nothing was to be paid directly on the license, nor was any penalty imposed upon failure to take one. The price of the license was to be a percentage on the premiums received for insurances, each of which was to be stamped accordingly. Such a tax would fall without any definition of indirect taxation, and the form given to it was apparently with the view of bringing it under class 9 of sec. 92, which relates to licenses. In *Reed's* Case, 10 App. Cas., 141, the tax was a stamp duty on exhibits produced in courts of law, which in a great many, perhaps most, chargeable with it. In *Severn's Case*, 2 Sup. Court of Canada, 70, the tax in question was one for licenses which by a law of the Legislature of Ontario were required to be taken for dealing in liquors. The Supreme Court held the law to be *ultra vires*, mainly on the ground that such licenses did not fall within class 9 of sec. 92, and that they were in conflict with the powers of Parliament under class 2 of sec. 91. It is true that all the Judges expressed opinions that the tax, being a license duty, was not a direct tax. Their reasons do not clearly appear, but, as the tax now in question is not either in substance or in form a license duty, further examination of that point is unnecessary.

13 The next question is whether the tax is taxation within the province. It is urged that the bank is a Toronto corporation, having its domicile there, and having its capital placed there; that the tax is on the capital of the bank; that it must therefore fall on a person or persons, or on property, not within Quebec. The answer to this argument is that class 2 of sec. 92 does not require that persons to be taxed by Quebec are to be domiciled or even resident in Quebec. Any person found within the province may legally be taxed there if taxed directly. This bank is found to be carrying on business there, and on that ground alone it is taxed. There is no attempt to tax the capital of the bank, any more than its profits. The bank itself is directly ordered to pay a sum of money; but the Legislature has not chosen to tax every bank, small or large, alike, nor to leave the amount of tax to be ascertained by variable accounts or any uncertain standard. It has adopted its own measure, either of that which it is just the banks should pay, or of that which they have means to pay, and these things it ascertains by reference to facts which can be verified without doubt or delay. The banks are to pay so much, not according to their capital, but according to their paid-up capital, and so much on their places of business. Whether this method of assessing a tax is sound or unsound, wise or unwise, is a point on which their Lordships have no opinion, and are not called on to form one, for as it does not carry the taxation out of the province it is for the Legislature and not for Courts of Law to judge of its expediency.

14 Then is there anything in sec. 91 which operates to restrict the meaning above ascribed to sec. 92? Class 3, certainly is in literal conflict with it. It is impossible to give exclusively to the Dominion the whole subject of raising money by any mode of taxation, and at the same time to give to the Provincial Legislatures, exclusively or at all, the power of direct taxation for provincial or any other purposes. This very conflict between the two sections was noticed by way of illustration in the case of *Parsons*, 7 App. Cas., 96. Their Lordships there said, 7 App. Cas., 108: "So 'the raising of money by any mode or system of taxation' is enumerated among the classes of subjects in sec. 91; but, though the description is sufficiently large and general to include 'direct taxation within the province, in order to the raising of a revenue for provincial purposes,' assigned to the Provincial Legislatures by sec. 92, it obviously could not have been intended that, in this instance also, the general power should override the particular one." Their Lordships adhere to that view, and hold that, as regards direct taxation within the province to raise revenue for provincial purposes, that subject falls wholly within the jurisdiction of the Provincial Legislatures.

15 It has been earnestly contended that the taxation of banks would unduly cut down the powers of the Parliament in relation to matters falling within class 2, viz., the regulation of trade and commerce; and within class 15, viz., banking, and the incorporation of banks. Their Lordships think that this contention gives far too wide an extent to the classes in question. They cannot see how the power of making banks contribute to the public objects of the provinces where they carry on business can interfere at all with the power of making laws on the subject of banking, or with the power of incorporating banks. The words "regulation of trade and commerce" are indeed very wide, and in *Severn's Case*, 2 Sup. Court of Canada, 70, it was the view of the Supreme Court that they operated to invalidate the license duty which was there in question. But since that case was decided the question has been more completely sifted before the Committee in *Parsons' Case*, 7 App. Cas., 96, and it was found absolutely necessary that the literal meaning of the words should be restricted, in order to afford scope for powers which are given exclusively to the Provincial Legislatures. It was there thrown out that the power of regulation given to the Parliament meant some general or interprovincial regulations. No further attempt to define the subject need now be made, because their Lordships are clear that if they were to hold that this power of regulation prohibited any provincial taxation on the persons or things regulated, so far from restricting the expressions, as was found necessary in *Parsons' Case*, 7 App. Cas., 96, they would be straining them to their widest conceivable extent.

16 Then it is suggested that the Legislature may lay on taxes so heavy as to crush a bank out of existence, and so to nullify the power of Parliament to erect banks. But their Lordships cannot conceive that when the Imperial Parliament conferred wide powers of local self-government on great countries such as Quebec, it intended to limit them on the speculation that they would be used in an injurious manner. People who are trusted with the great power of making laws for property and civil rights might well be trusted to levy taxes. There are obvious reasons for confining their power to direct taxes and licenses, because the power of indirect taxation would be felt all over the Dominion. But whatever power falls within the legitimate meaning of classes 2 and 9, is, in their Lordships' judgment, what the Imperial Parliament intended to give; and to place a limit on it because the power may be used unwisely, as all powers may, would be an error, and would lead to insuperable difficulties, in the construction of the Federation Act.

17 Their Lordships have been invited to take a very wide range on this part of the case, and to apply to the construction of the Federation Act the principles laid down for the United States by Chief Justice Marshall. Every one would gladly accept the guidance of that great Judge in a parallel case. But he was dealing with the constitution of the United States. Under that constitution, as their Lordships understand, each state may make laws for itself, uncontrolled by the federal power, and subject only to the limits placed by law on the range of subjects within its jurisdiction. In such a constitution Chief Justice Marshall found one of those limits at the point at which the action of the State Legislature came into conflict with the power vested in Congress. The appellant invokes that principle to support the conclusion that the Federation Act must be so construed as to allow no power to the Provincial Legislatures under sec. 92, which may by possibility, and if exercised in some extravagant way, interfere with the objects of the Dominion in exercising their powers under sec. 91. It is quite impossible to argue from the one case to the other. Their Lordships have to construe the express words of an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself except under the control of the whole acting through the Governor-General. And the question they have to answer is whether the one body or the other has power to make a given law. If they find that on the due construction of the Act a legislative power falls within sec. 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament.

18 It only remains to refer to some of the grounds taken by the learned Judges of the Lower Courts, which have been strongly objected to at the Bar. Great importance has been attached to French authorities who lay down that the *impot des patentes*, which is a tax on trades, and which may possibly have afforded hints for the Quebec law, is a direct tax. And it has been suggested that the Provincial Legislatures possess powers of legislation either inherent in them, or dating from a time anterior to the Federation Act and not thought it necessary to call on the respondents' counsel, and therefore possibly have not heard all that may be said in support of such views. But the judgments below are so carefully reasoned, and the citation and discussion of them here has been so full and elaborate, that their Lordships feel justified in expressing their present dissent on these points. They cannot think that the French authorities are useful for anything but illustration. And they adhere to the view which has always been taken by this Committee, that the Federation Act exhausts the whole range of legislative power, and that whatever is not thereby given to the Provincial Legislatures rests with the Parliament.

19 The result is that, though not wholly for the same reasons, their Lordships agree with the Court of Queen's Bench. And they will humbly advise Her Majesty to affirm their decree, and to dismiss the appeal of the Bank of Toronto.

20 The other three cases possess no points of distinction in favour of the appellants. That of the Canadian Bank of Commerce is exactly parallel. The Merchants' Bank of Canada has its principal place of business in Montreal, and to that extent loses the benefit of one of the arguments urged in favour of the other banks. The insurance company is taxed in a sum specified by the Quebec Act, and not with reference to its capital, and so loses the benefit of one of the arguments urged in favour of the banks. The cases have been treated as substantially identical in the Courts below, and their Lordships will take the same course with respect to all of them.

21 The appellants in each case must pay the costs of the appeal.
Solicitors of record:
Solicitors for the Bank of Toronto: *Ingle, Cooper, & Holmes*.
Solicitors for the Merchants' Bank of Canada: *Hewlett & Preston*.
Solicitors for the Canadian Bank of Commerce: *Champion, Robinson, & Poole*.
Solicitors for the Insurance Company: *Hellams, Son, & Coward*.
Solicitors for the respondents: *Simpson, Hammond, & Co.*